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Supreme Court of the United States

OCTOBER TERM, 1938

No. 308

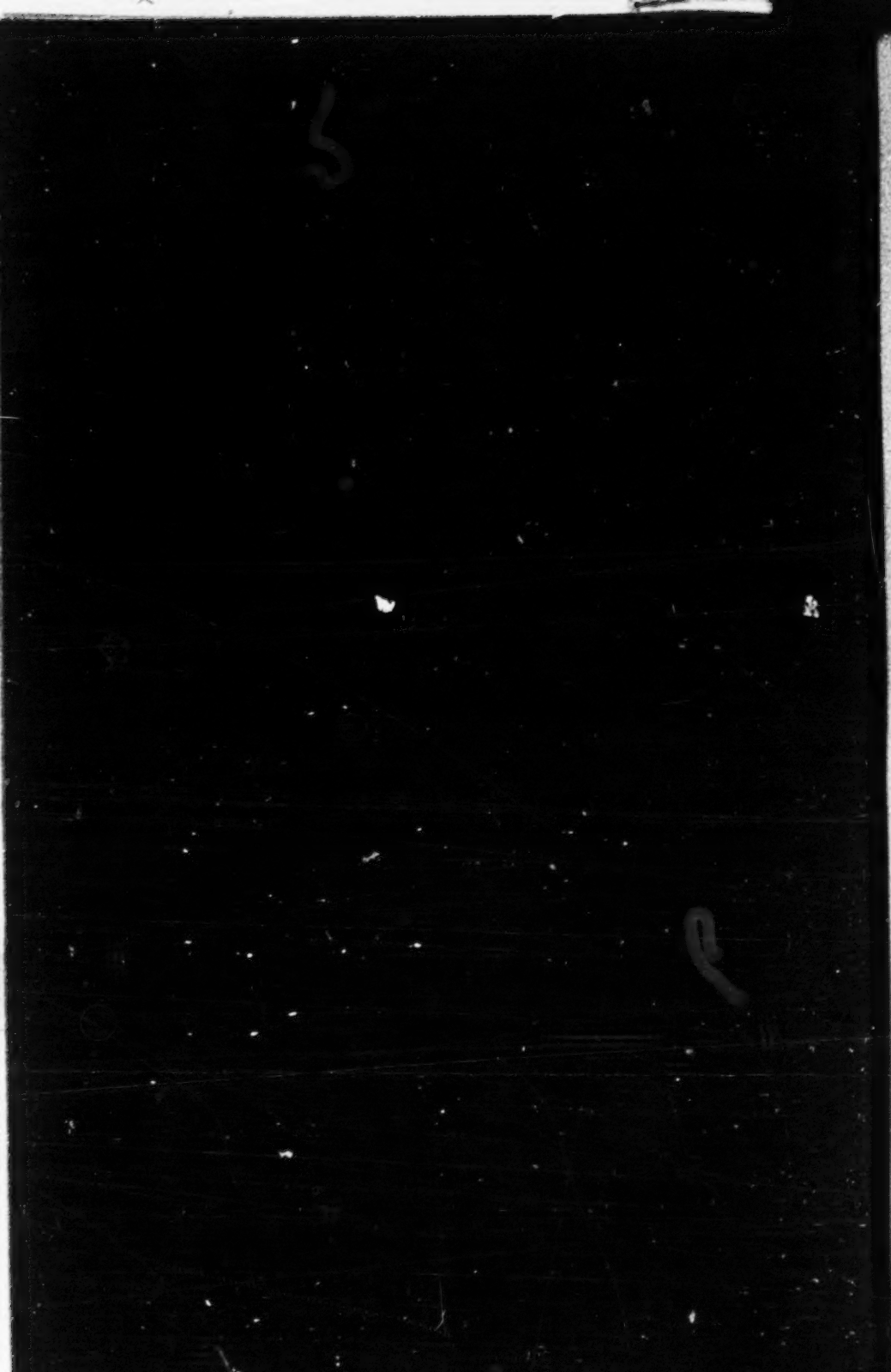
**IGNATIUS LANZETTA MICHAEL FALCONE AND
LOUIE DEL ROSSI, APPELLANTS,**

vs.

THE STATE OF NEW JERSEY

**APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE
OF NEW JERSEY**

FILED AUGUST 30, 1938.



SUPREME COURT OF THE UNITED STATES

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[fol. 1] IN SUPREME COURT OF NEW JERSEY

THE STATE, Defendant in Error,

against

**FRANK PIUS, Alias IGNATIUS LANZETTA, MICHAEL FALCONE
and LOUIS DEL ROSSI, Plaintiffs in Error**

ASSIGNMENTS OF ERROR

The above named Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, the plaintiffs in error, by their attorney, George R. Greis, say that in the record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error against them the said, Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, and say that the said judgment should be reversed and hereby assign the following reasons and causes for such reversal.

1. Chapter 155 of the Laws of 1934 for an alleged violation of which plaintiffs in error were indicted, tried and convicted is unconstitutional and void under the provisions of the Constitution of the United States in that it is contrary to one or all of the following provisions of the Constitution, namely, Article IV, Section 2, the Thirteenth Amendment to [fol. 2] the Constitution and the Fourteenth Amendment to the Constitution.

2. That the said suit is in violation of one or all of the following provisions of the Constitution of the State of New Jersey, namely, Article 1, Section 15, Article 1, Section 18, Article IV, Section 7, Paragraph 3, and Article IV, Section 7, Paragraph 4.

3. Because the trial court refused to quash the indictment on motion duly made by counsel.

4. Because the trial court refused to direct a verdict of acquittal on motion duly made by counsel for the plaintiffs in error.

5. Because the verdict was against the weight of evidence.

6. Because the indictment failed to charge the commission or omission of any overt act within the jurisdiction of the trial court and because no crime had been committed.

7. Because the verdict of the jury was contrary to the court's charge to the jury and contrary to the evidence.

8. Because upon the whole record the judgment of conviction is contrary, to law.

[fol. 3] 9. Because the proofs submitted by the State did not prove the allegations of the indictment.

George R. Greis, Attorney for and of Counsel with
Plaintiffs in Error.

I have received a copy of the foregoing Assignments of Error this Thirty-First day of March, 1937.

French B. Loveland, Prosecutor of the Pleas of Cape
May County.

[fol. 4] IN SUPREME COURT OF NEW JERSEY

WRIT OF ERROR

THE STATE OF NEW JERSEY, ss:

The State of New Jersey to Palmer M. Way, Esq., Judge of the Court of Quarter Sessions of the County of Cape May:

Because in the indictment record of proceedings and also in giving judgment upon the certain indictments against Frank Pious alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, upon charges of being enemies of the State and gangsters and with violations of the provisions of the statute which is Chapter 155 Laws of 1934, of the State of New Jersey, in the Borough of Wildwood Crest, County of Cape May and State of New Jersey, which said indictments and the several counts therein were returned to the Court on the thirty-first day of July, 1936, as having been found by the Grand Jury of the County of Cape May, whereof, before you they have been indicted and thereafter were convicted by a certain jury of the County of Cape May, taken between the State of New Jersey and the said Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, as it is said, manifest error has intervened to the great damage of the said Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, as from their complaint we have received information, we being willing in their behalf, to correct the error in due manner, if any there

shall be, and that speedy justice be done to them, the said Frank Pius alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, command you that if judgment be thereon [fol. 5] given, then you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same to our Justice of our Supreme Court of the State of New Jersey, on the 12th day of April next, and this writ with the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws of New Jersey ought to be done.

Witness, Honorable Thomas J. Brogan, Chief Justice of our Supreme Court at Trenton, New Jersey, this 23rd day of March, one thousand nine hundred and thirty-seven.

Fred L. Bloodgood, Clerk.

George R. Greis, Attorney.

[fol. 6] IN COURT OF QUARTER SESSIONS OF CAPE MAY COUNTY,
APRIL TERM, A. D. 1936

Before Palmer M. Way, Judge

THE STATE

VS.

FRANK PIUS, Alias FRANK LANZETTA, Alias IGNATIUS LANZETTA, Alias Ignatius Lanzetto, Alias Ignatius A. Lanzetti, and Michael Falcone, Alias Mickey Britt, and Louis Del Rossi, Alias Fattie Louie

Indictment for Violation of Gangster Act

French B. Loveland, Prosecutor of the Pleas, for State.
George R. Greis, A. J. Cafeiro, for Defendants.

[fol. 7]

RETURN

The answer of Palmer M. Way, Esquire, President Judge of the Court of Common Pleas of the County of Cape May, holding the Court of Quarter Sessions in and for the said County within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme

Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

Palmer M. Way, Judge.

And I further certify that returned herewith is the record of the entire proceedings at the trial of the said cause.

Palmer M. Way, Judge.

[fol. 8] IN COURT OF QUARTER SESSIONS OF CAPE MAY COUNTY

PRESENTATION OF INDICTMENTS

Be it Remembered, that a Court of Oyer and Terminer, holden at Cape May Court House, in and for the said County of Cape May, on the second Tuesday of April in the year of our Lord one thousand nine hundred and thirty-six, before the Honorable Ralph Donges, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Palmer M. Way, Judge of the Court of Common Pleas, in and for the said County, according to the form of statute in such case made and provided, by the oath of Charles W. Haines, Gilbert Hughes, Raymond Adams, Edmund Glazier, John Castaldi, Frank Biddle, William Moncrief, Edward Kurtz, Ralph Johnson, William Jocher, Irvin Stevens, Harry Nickerson, J. Woodruff Eldredge, Bertrand Hillman, Irvin Loper, John Kaighn, Asa Colson, Mulford Stevens, Clair Faust, Charles Grace, Heath Norbury, Raymond Hall and William Lipman, good and lawful men of the said County of Cape May, duly summoned, and then and there sworn, affirmed and charged to inquire for the State of New Jersey, in and for the body of the said County of Cape May.

It is Presented, in manner and form following, that is to say:

The bills herewith presented are true bills.

Charles W. Haines, Foreman.

Filed July 31, 1936. Stirling W. Cole, Clerk.

[fol. 9] IN COURT OF QUARTER SESSIONS OF CAPE MAY COUNTY

INDICTMENT

In the Court of Oyer and Terminer of Cape May County, April Term, in the year of our Lord one thousand nine hundred and thirty-six (1936).

CAPE MAY COUNTY, to wit:

The grand inquest of the State of New Jersey, and for the body of the County of Cape May, upon their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath.

Present that Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt and Louis Del Rossi, alias Fattie Louie, late of the Borough of Wildwood Crest in the said County of Cape May, on the 12th, 16th, 19th and 24th days of July in the year of our Lord one thousand nine hundred and thirty-six (1936) at the Borough of Wildwood Crest in the County of Cape May aforesaid, and within the jurisdiction of this Court, they, and each of them, not being engaged in any lawful occupation; they, and all of them, known to be members of a gang, consisting of two or more persons, and they, and each of them, having been convicted of a crime in the State of Pennsylvania, are hereby declared to be gangsters.

To the evil example of all others in like case offending, contrary to law in such case made and provided, and against [fol. 10] the peace of this State, the government and dignity of the same.

French B. Loveland, Prosecutor of the Pleas.

Filed July 31, 1936. Stirling W. Cole, Clerk.

Which said indictment was to wit, on the Thirty-first day of July in the year of our Lord one thousand nine hundred and thirty-six, at a Court of Quarter Sessions holden at Cape May Court House, in and for the County of Cape May, no Justice of the Supreme Court of the State of New Jersey nor Judge of the Court of Quarter Sessions being present in the Court House, and the Grand Jury being desirous of making a presentment of sundry bills of indictment according to the form of the statute in such case made and pro-

vided, duly delivered here in Court by the Grand Jurors aforesaid, to Stirling W. Cole, Clerk of the County of Cape May, and impounded, pursuant to an order of the Court heretofore made, as here set forth, to wit:

IN COURT OF QUARTER SESSIONS OF CAPE MAY COUNTY

In the Matter of Reception of Indictments of the April Term, 1936

[fol. 11]

ORDER RE INDICTMENTS

It is on this 31st day of July, 1936, hereby ordered that Stirling W. Cole, Clerk of the County of Cape May, receive from the above Grand Jury such indictments or presentments as they may make at the conclusion of their scheduled session of July 31st, 1936, and impound said indictments and move in all particulars pursuant to Chapter 239 of the Laws of 1929.

Palmer M. Way, Judge, Cape May County Quarter Sessions.

Entered July 31, 1936. Stirling W. Cole, Clerk.

IN COURT OF QUARTER SESSIONS OF CAPE MAY COUNTY

TRIAL PROCEEDINGS

And afterwards, that is to say on the Thirty-first day of July A. D. nineteen hundred and thirty-six, at the said Court of Quarter Sessions holden before Honorable Palmer M. Way, Judge of Cape May County Court of Common Pleas and Quarter Sessions, said indictments were released from impoundment by order of said Court on motion of French B. Loveland, Prosecutor of the Pleas.

And afterwards, to wit, on the said Thirty-first day of July in the year of our Lord one thousand nine hundred thirty-six, before Palmer M. Way, Esquire, Judge of the Court of Quarter Sessions of the County of Cape May, the defendants, Frank Pius, alis Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. [fol. 12] Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, were ordered to be

placed at the bar to plead and on being charged by French B. Loveland, Prosecutor of the Pleas, upon this indictment, plead not guilty thereto.

And afterwards, that is to say on the Twelfth day of August A. D. nineteen hundred thirty-six, to which day the trial of the aforesaid indictment was postponed, at the said Court of Quarter Sessions holden before Honorable Palmer M. Way, Judge of Cape May County Court of Quarter Sessions, comes French B. Loveland, Prosecutor of the Pleas, who prosecutes as aforesaid, and the said Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, being set to the bar withdraw the pleas of not guilty heretofore entered by them to this indictment, for the purpose of making a motion to quash the indictment, and this motion being denied by the Court, the said defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, were ordered to be placed at the bar to plead and on being charged by French B. Loveland, upon this indictment, plead not guilty thereto;

And Afterwards, that is to say on the Fourteenth day of September A. D. nineteen hundred thirty-six, to which day the trial of the aforesaid indictment was postponed, at the [fol. 13] said Court of Quarter Sessions holden before Honorable Palmer M. Way, Judge of Cape May County Court of Quarter Sessions, comes French B. Loveland, Prosecutor of the Pleas, who prosecutes as aforesaid, and the Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, were set to the bar and being ready for trial, the trial of the said indictment was moved by French B. Loveland, Prosecutor of the Pleas, the Sheriff, Paul M. Scull, was then ordered to return a panel of jurors, and the following jurors not being challenged, were duly sworn by the Clerk of the Court:—

Mary Fox, Margaret Davis, J. H. Becotte, William Stockett, Sadie Herbert, Ruth Goslin, Abraham Levy, Frank L. Bennett, Reba Barber, Ellsworth Somers, Walter Sherman, and Edward Schlegel, upon that jury, who to speak the truth of and concerning the premises, and thereupon the trial of

said issue was commenced and continued until the Fifteenth day of September A. D. nineteen hundred thirty-six, when the jury returned into Court in charge of the officers sworn to attend them, and then and there in the presence of Honorable Palmer M. Way, Judge of the Cape May County Court of Quarter Sessions, do say upon their oath, they find the defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, guilty in the manner and [fol. 14] form as charged upon this indictment, with a recommendation to Court for mercy, and so say they all.

Afterwards, to wit, on the Twenty-third day of September in the year of our Lord one thousand nine hundred thirty-six, before Honorable Palmer M. Way, Judge of Cape May County Court of Quarter Sessions, at Cape May Court House, cometh the said Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, and having been set to the bar in their proper person to receive the judgment of the law; French B. Loveland, Prosecutor of the Pleas, then moved for the judgment of the law.

Whereupon, on the said Twenty-third day of September in the year of our Lord one thousand nine hundred and thirty-six, all and singular the premises being seen by the Court here fully understood, it was ordered and adjudged by the Court that the defendants, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, each, be imprisoned in the State Prison of this State for not more than a maximum term of ten years and not less than a minimum term of five years, at hard labor, upon this conviction.

[fol. 15] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 16] IN COURT OF QUARTER SESSIONS OF CAPE MAY
COUNTY

[Title omitted]

MOTION TO QUASH INDICTMENT

The above entitled Cause came up for Motion Wednesday morning, August 12, A. D. 1936, at ten-thirty A. M., before the Hon. Palmer M. Way, Judge of the Common Pleas Court. French B. Loveland, Esq., Prosecutor of Cape May County, appearing for the State, and George R. Greis, Esq., and A. J. Cafiero appearing for the defendants.

By Mr. Greis: May it please the Court: At this time I would ask the Court's permission to withdraw the pleas of Not Guilty, entered in the indictment against Lanzetta, Falcone and Del Rossi, a joint indictment, for the purpose of making a Motion to quash.

By the Court: For that purpose it may be withdrawn and so stated on the record.

By Mr. Greis: If the Court please: I move to quash the indictment found in this case, for several reasons.

The first reason is that the indictment is insufficient in [fol. 17] particulars, as to any offense, alleged to have been committed, to properly enable the defendants to prepare their separate defenses.

The second reason is, that the indictment sets forth no act alleged to have been committed in controversion of any Statute of the State of New Jersey.

The third reason is, that the indictment fails to charge a crime. Further, that it fails to set forth any date, place or tribunal of an alleged conviction in the State of Pennsylvania: And for these, and other reasons, is vague, uncertain and indefinite.

Also, If the Court please, upon various constitutional grounds, and we believe that the Statute, under which this indictment has been found, is unconstitutional for various reasons, which I will state to the Court.

The first of those reasons is that the particular section of the law, under which the indictment is drawn, does not charge any act, any overt act, of any kind or description. Under the division of crime it is neither an act of omission or commission, either contrary to the statute or contrary to precepts of the early Common Law. But this particular

Statute charges only a status and state of being and condition, or set of conditions, existing, and attempts to make that state of things a crime. Section 4, under which this indictment is drawn, reads: "Any person not engaged in lawful occupation, known to be a member of any gang, con-[fol. 18] sisting of two or more persons, who has been convicted at least three times of being disorderly persons, or who has been convicted of any crimes in this, or any other State, is declared to be a gangster; provided, however, that nothing in this section contained shall in any wise be construed to include any participant or sympathizer in any labor dispute." Also it is an added fact that the first paragraph of this law, any of the first five paragraphs, do not create a crime; they create a status or set of conditions. The first paragraph, that might be considered, states a gangster is hereby declared to be an enemy of the State of New Jersey and then the succeeding paragraphs go on to discuss the state of being, or conditions, as I have said, that create or dominate a person a gangster. But then having been found a gangster the fifth paragraph ends up by saying:

"Any person convicted of being a gangster under the provisions of this act shall be guilty of a high misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment not exceeding twenty years, or both."

We can see the second reason for unconstitutionality of this particular section of the act, if not all of it, is the 13th Amendment to the United States Constitution, which reads: "Involuntary servitude shall not exist within the United States or any place subject to its jurisdiction." Of course we know that was added to the Constitution for the purpose of stopping slavery: But here is a law which says: "A person not engaged in lawful occupation," with two or three [fol. 19] added condition, or conditions, in the United States, to be committed, but conditions already existing, shall be thus and so and guilty of a high misdemeanor.

The second constitutional ground, or third constitutional ground is, that it violates the 14th Amendment, which provides: "That no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or shall any State deprive any person of life,

liberty or property without due process of law, or deny to any person within the jurisdiction the equal protection of the laws."

The fourth constitutional reason is that it violates Article 1, Section 1, of the Constitution of New Jersey, which provides: "That natural and unalienable rights of enjoying and defending life and liberty, acquiring and possessing and protecting property and pursuing and obtaining safety."

Fifth, that it violates the New Jersey Constitution, Article 1, Section 18, which provides: "That the people have the right freely to assemble together, to consult for the common good." That refers to the particular paragraph of this Section in the Statute, in which these defendants are charged: "Known to be a member of a gang consisting of two or more persons."

Six, that it violates Article 4, Section 7, Paragraph 3, which provides: "The Legislature shall not pass any bill of attainder or ex post facto law."

[fol. 20] Seven, that it violates Article 4, Section 7, paragraph 4, which provides: "That every law shall embrace but one object, and that shall be expressed in the title, &c."

If the Court Please: Those are the general statements of the reasons for asking that the indictment be quashed.

(Argument follows).

By the Court: Do you have anything you want to say, Mr. Cafeiro?

By Mr. Cafeiro: Not at this time, if the Court please, I may decide to say something after the Prosecutor is through replying.

By the Prosecutor: If the Court please: The State asks that the Motion be dismissed, directed to quash the indictments.

One of the points in question was that the act was ex post facto. It is not ex post facto unless all these circumstances do not arise. First we have got unlawful occupation, members of a gang, convicted three times of being disorderly or one convicted of crime and that is the conditions of the arguments today, if the Court please.

As to the phrase saying that the Act on the part of the Legislature of the State of New Jersey is unconstitutional. In the immediate past, after the elimination of the Volstead [fol. 21] Act, when rackets ceased to be able to secure their means by that unlawful occupation, then there rose up in our

country a kidnapping epidemic. The State was unable to cope with the situation so Congress took notice of the situation and passed what is known as the famous Lindbergh Case or law and when those, who were participating in that obnoxious situation, were apprehended they then granted an amendment and it is now in our constitution of the Country, and in this State, and does not violate any of the rights of the constitution. The Constitution, as found in the State of New Jersey, and through its Legislature, has deemed it advisable to pass an act, which attempts to, and I think does, control this situation, with reference to the evils to be confronted. That is what the State of New Jersey has done. They saw a state existing, which is obnoxious to Society, and has passed an act dealing with that situation. The word Gangster has never been interpreted by any of the Courts of the State of New Jersey to date, so that the only thing to do is take the proper meaning as applied to all gangs. It describes a body of men associated together for matters entirely proper, labor and things of that sort, but gangs of men have improper purposes; take page 34, the word gangster, where it is used in a sinister sense. The Court of Errors has said that the purpose of this legislature is to check evils in dealing with the act, which is acknowledged to this. The purpose is to check evils in the beginning and thus result in proper safety.

If the Court please: This is not the first time this act has [fol. 22] been attacked from constitutionality, there having been two other cases in the State of New Jersey; one in our neighboring County, Gloucester County, at which time a motion attacking the constitutionality of this indictment was made and the same argument offered today was presented at that time. The Court in that County ruled and there was a conviction in that case. The only other case was in Passaic County and there was no appeal from that case.

By Mr. Greis: The case just referred to was under a section other than the one we are working on.

By the Prosecutor: Section 2 and Section 4 both, and there were convictions on both sections.

By the Court: Both sections?

By the Prosecutor: Yes. So if the Court please: Under all the attacks as to the constitutionality, I might say the Court has a precedent in the matter and although it is not a higher court, it is a court of record, and this matter has been passed on, and it can be an authority, and that is the

only case that has been adjudicated in the State. So the State asks that the motion be dismissed. The State also asks that date be fixed for trial.

By Mr. Cafiero: The Prosecutor has not met the issue [fol. 23] presented by my associate and I would limit myself to the things and matters, which he has mentioned, and I take it those matters, which have been in controvert, with exception of a frank denial, stand without controversion. None of the arguments, which was raised as to *Ex Post Facto*, the Prosecutor stated there was the conditions. We submit the only matter, which is before the Court, at the present time, is the indictment. The indictment does not recite when that crime was alleged to be committed in the State of Pennsylvania. Besides the indictment being before the Court; the act, under which that said indictment is found, is likewise before the Court and that was approved in May, 1934. We are not required to meet any other issue, except those mentioned in the indictment, and it doesn't state when in Pennsylvania and we say it is insufficient and it would be difficult in the following of the charge and of any tribunal, which may have passed upon the validity in this section; the matter, of course, is unreported. We have no means of getting the records of the arguments having been advanced and I do respectfully state Your Honor is not bound by any other argument before the Courts but the argument raised today and this particular indictment today. We contain it is defective on one further ground. It sets forth the dates of the 12th, and the 19th of July as the dates of the charge, when these people were not engaged in lawful occupation. If there is any reference to the calendar it will indicate those days are Sundays and as I know the law in our State as to working on Sunday, I don't see how anyone could possibly be charged with a crime. The law says [fol. 24] you should not work on Sunday and under this indictment it is a crime if you do and a crime if you don't. We maintain it is defective and does not sufficiently appraise us of the matters at all. I will not take more time to repeat the matters presented by Mr. Greis.

By Mr. Greis: The case referred to is 31 New York supplemental, 926.

By the Court: I can't feel I am sufficiently impressed by the proponents of the motion to grant it. I think, without any further statement, that I shall deny the motion.

By Mr. Cafiero: Allow an exception?

By the Court: Granted.

(Argument follows as to date for trial and September 14th, A. D. 1936 is set as the date of trial.)

By Mr. Greis: I would like to have the plea entered again, the plea that was withdrawn.

(All plead not guilty.)

By the Court: Not guilty on behalf of all the indictments, and all three defendants, as now presented. They are familiar with the indictment in that they have already entered a plea of not guilty by counsel; and counsel, both counsel [fol. 25] sel, consent to that, and the defendants consent to that being entered on the record? (Affirmative.)

Palmer M. Way, Judge.

After having been sworn in as stenographer the notes, and the transcribing of said notes, are a true copy of the above entitled motions, taken to the best of my ability.

Blanche Bonnell, Stenographer.

[fol. 26] COURT OF OYER AND TERMINER, CAPE MAY COUNTY

STATE OF NEW JERSEY

VERSUS

FRANK PIUS, Alias FRANK LANZETTA, Alias IGNATIUS LANZETTA, Alias Ignatius Lanzetto, Alias Ignatus A. Lanzetti, and Michael Falcone, Alias Mickey Britt, and Louis Del Rossi, Alias Fattie Lonie, Defendants

Before Hon. Palmer M. Way, J., and a Jury

Statement of Evidence

Cape May Court House, N. J.,
Monday, September 14, 1936.

APPEARANCES

French Loveland, Esq., Prosecutor of the Pleas, and Herbert Campbell Esq., Assistant Prosecutor, for the State.

[fols. 27-51] Geore Greis, Esq., A. J. Cafeiro, Esq., and Samuel Kagle, Esq. (Philadelphia), for the Defendants.

[fol. 52] SERGEANT WILLIAM P. KELLY, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

Q. Sergeant Kelly, where do you live?

A. In Hammonton, New Jersey.

Q. And what is your occupation?

A. Sergeant of State Police.

[fol. 53] Q. Now, Sergeant, I ask you whether you recall your whereabouts on Friday, July 24th, of this year, about five o'clock in the afternoon?

A. I do.

Q. Where were you?

A. I was in Troop A Headquarters, in the Jersey State Police in Hammonton.

Q. And did you leave there shortly thereafter?

A. I did.

Q. And where did you start to?

A. About five P. M. on July 24th, Captain Ryan, in company with Sergeant Peltz, Detective Wallace, McClure and Steinberg—

Mr. Greis: That is objected to as not responsive.

The Court: Not responsive. Restate the question and strike out the answer.

(The question was read by the stenographer as follows: ("And where did you start to?"))

A. Started to go to Wildwood Crest.

Q. And who accompanied you, Sergeant?

A. Captain Ryan, Sergeant Peltz, Detective Wallace, McClure and Steinberg, and also Detective Ruggerio of our Department.

Q. And I ask you whether you arrived at Wildwood Crest?

A. We did.

Q. About what time?

[fol. 54] A. About six P. M.

Q. After you arrived at Wildwood Crest, where did you go?

A. We went in the vicinity of Crocus Road, Wildwood Crest.

Q. Will you please go ahead and describe what you did?

A. We cruised in the vicinity of Crocus Road and Jersey Avenue. Upon arriving at Wildwood Crest we were joined by Captain Creeden. Captain Creeden got in the car with me, Detective McClure and Wallace, Captain Ryan and Detective Ruggerio in company with Sergeant Peltz and Steinberg in the other car. While cruising in the vicinity of Crocus Road and Jersey Avenue, we observed Ignatius Lanzetti in company with Mickey Britt walking on New Jersey Avenue between Astor and Cardinal Avenue, walking in the direction of Crocus Road. We were later joined by Captain Ryan and notified him of what we had seen. He advised that we should continue to cruise in that vicinity in an attempt to learn who was living on Crocus Road. While watching 107 Crocus Road we observed, about eight-thirty P. M., we observed Mickey Britt come out of 107 Crocus Road, and about the same time he came out of the house or within a minute or so, Captain Ryan drove up in his car and they started to get out of his car, and Mickey Britt walked on Crocus Road towards New Jersey Avenue, and apparently looked over his shoulder and saw these men entering 107, and he ran across the street.

Mr. Greis: Just a minute, please. This witness is testifying [fol. 55] ing to what other people saw. I object to it and ask it be stricken from the record, and ask the witness be cautioned in telling this story to tell what he knows of his own knowledge and what he saw himself.

The Court: Yes, you must be careful of your statements in that respect. Counsel for the defense is right. You will confine your narrative statements as to what you saw and not what somebody else might have seen.

The Witness: Yes, sir.

The Court: Proceed.

The Witness: We observed the car containing Captain Ryan—

Mr. Greis: If the Court please, I object to the statement "we". This witness is testifying not for the party but for himself.

The Court: That is quite right. Confine your remarks to what you have seen yourself.

The Witness: I observed the car containing Ryan stop in front of the premises of 107 Crocus Road about two minutes after the defendant Mickey Britt had walked out of the premises. Mickey Britt walked on Crocus Road towards New Jersey Avenue, or Jersey Avenue. While walking towards Jersey Avenue he looked over his shoulder, turned his head and looked back towards Crocus Road and then [fol. 56] he darted across the street behind a Pontiac sedan which was parked there, which had a Delaware registration on, containing a woman. He crouched down behind this car while Captain Ryan and other detectives entered 107 Crocus Road. At that time we drove up in back of the car and arrested Mickey Britt.

Q. And then did you go in this house, 107 Crocus Road?

A. We left the defendant Mickey Britt in our car in company with Detective McClure and we entered the premises 107 Crocus Road and found Captain Ryan had then Del Rossi and Ignatius Lanzetti under arrest in that house.

Q. And then I ask you did you search the house?

A. The house had been searched before I arrived in there.

Q. Now, after that where did you take the three defendants?

A. First took the three defendants to the Wildwood Crest police headquarters.

Q. And from there where did you take them?

A. Took them to our sub-station located here in Cape May Court House.

Q. And I ask you what conversations took place between you and these defendants at the Troopers' headquarters here at Cape May Court House.

A. They brought the three defendants into the office—rather, I did, in company with others—and sat them on a sort of a porch swing and proceeded to ask routine questions of them, for my arrest report. I asked Mr. Lanzetti his correct name. He told me his name was Ignatius Andrew Lanzetti. He told me that he was thirty-three years old.

Mr. Greis: This is objected to, if the Court please, until it be shown that the defendants were advised, if they were advised, that statements made might be used against them.

Mr. Loveland: If the Court please, this is not a confession. This is just conversation that took place between these defendants and this police officer.

Mr. Greis: The defendants were under arrest, if the Court please, according to the testimony, and unless its competency be shown and that it be shown definitely that they were told that these statements were to be used against them, it is not proper testimony in this case.

The Court: I will hear you, Mr. Prosecutor.

Mr. Loveland: If the Court please, here is the situation. Here you have a police officer entering into a conversation with these defendants and there is not any efforts or no intentions on the part of the State to prove this was in any wise a confession. This was a statement made at the time of the arrest and after they were arrested and by all the rules of evidence as I know them this is certainly admissible. If that were not true, then no statement that could [fol. 58] be made by any defendant at any time in circumstances such as these—there would never be any result. Now, in the case of their asking for a signed confession—but that is not our situation. This is a conversation taking place between these defendants—and it certainly is admissible.

The Court: And you think it is a voluntary conversation that is now being talked about.

Mr. Greis: Might I suggest, if the Court please, that no statement is voluntary when a defendant is under arrest. In other words, voluntary statements mean statements made before arrest or made to some person voluntarily when there is no thought of action for court or what not. A confession, on the other hand, is one—statement which is made after the defendant is perhaps under arrest and with the definite idea that it is to be used in court against him. Here we don't have either—neither the voluntary statement, because they are under arrest, they are under compulsion, they are brought here against their will to the State Police barracks at Cape May Court House from their place in Wildwood and they say certain things. I say that they are not admissible under those conditions unless they are told that the statements are to be used against them, or unless they were made in some voluntary manner prior to the arrest. It certainly is apparent that it was the inten-

tion to use these statements because they are now being produced the first thing, the first witness in the case.

Mr. Loveland: If the Court please, that is just a deduction [fol. 59] being drawn. The practical application in this manner is that if it is impossible for witnesses to state the conversation which took place between the defendants, the practical results are that not a conviction out of a thousand would be possible to obtain. These defendants were under arrest and in the usual procedure of the police they question all defendants and make a report therefrom. And this is what is happening in this case. It is part of the res—it is part of this—it is part, an integral part, of this present case.

The Court: Were these defendants that now appear here, were they under oath at the time of this discussion or was it just a conversation?

The Witness: Just a conversation, sir, conversation of routine—

The Court: Do I understand that no hearing had been opened?

The Witness: No, sir.

The Court: I will allow the question to be asked.

Mr. Greis: Your Honor will allow me an exception.

The Court: Granted.

Palmer M. Way, Judge.

[fol. 60] Q. Proceed, Sergeant, and tell us the conversation between you and these defendants at the State Police headquarters at this time.

A. I first asked Lanzetti what his full name was, and he told me Ignatius Andrew Lanzetti. I asked him how old he was and he told me he was thirty-three years of age. I asked him where he was born; he told me City of Philadelphia. I asked him where his home was, and he told me on some number on Pine Street in the City of Philadelphia. I asked him what his occupation was and he said he was a machine fixer. I asked him how long it was since he was employed and he said he had not been employed in over five years.

I next asked Falcone what his full name was, and he said Michael Falcone. I asked him what nicknames he used or aliases he had, and he told me Mickey Britt. I asked him where he was born; he informed me he was born in the City

of Philadelphia. I asked him how old he was, and he told me he was thirty-five years of age. I asked him what his occupation was and he told me he was a bricklayer. I asked him how long it was since he was employed; he said he had not been employed since he got out of prison four or five years ago.

I asked Mr. Del Rossi what his name was, and he told me Louis Del Rossi. I asked him where he lived; he told me he lived on some number on Carleton Street, the City of Philadelphia. I also asked him where he was born; he told me Philadelphia. I asked him how old he was. He told me he was thirty-two years of age. I asked him what his occupation was, and he told me he was a chauffeur. I asked [fol. 61] him how long it had been since he was employed, and he says he had not been employed in over two years.

Q. And then I ask you whether on the next day, on the following day, on July 25th, you had any further conversation with these defendants?

A. On the 25th, in company with Detective Ruggerio and Corporal Waldinger, we went to the County Jail to take these men to be arraigned, brought them out of the row of cells into the corridor, and Detective Ruggerio at this time held a conversation with them as to when they were last employed, and as to that subject they answered as they had to me the night before.

I also asked Ignatius when he had come to Wildwood Crest. He told me he had come down here about June 22nd. I asked Del Rossi when he had come down here, and he told me he came down with Ignatius. I asked Mickey Britt when he came down, and he said he had been down here since the previous Sunday. His words were he had been down since last Sunday. While in the jail corridor Detective Ruggerio asked—also asked the same questions, about when they had come down here, and when Ruggerio asked Mickey Britt he said he was down on several occasions.

Q. Prior to this particular time that he was mentioning?

A. That was his answer, that he was down here on several occasions, several times.

Q. Now asking you whether on that same day you heard any further conversation as to whether they had been convicted or not.

[fol. 62] A. We arraigned the three defendants—

Mr. Greis: Now, I object to that. That is one of the material points to this charge. And I don't think the con-

versation is material because there is a best evidence rule. And that can be proven, and it should be admitted——

Mr. Loveland: I will withdraw the question.

The Court: I think that is the correct thing to do. The question is withdrawn. You need not answer it.

Mr. Loveland: Cross-examine.

Cross-examination.

By Mr. Greis:

Q. Sergeant, it was on the 24th that you went to Wildwood, was it?

A. 24th of July, yes, sir.

Q. Of July or June?

A. July.

Q. July. And had you seen or observed any of these three defendants prior to that day, prior to your arrival in Wildwood Crest that afternoon?

A. I had never seen any of the defendants prior to that date.

Q. And were any of the defendants in your presence that day at any time when you saw them engaged in any unlawful [fol. 63] act of any kind? In other words, were they doing anything?

A. Mickey Britt and Ignatius Lanzetti were walking down the street, walking down the pavement on Jersey Avenue.

Q. Is that an unlawful act, to the best of your knowledge?

A. No, sir.

Q. Were they engaged in any unlawful act or doing anything unlawful in your sight during that day?

A. Yes, I considered that they were.

Q. What?

A. Violating the gangster act.

Mr. Greis: I ask that be stricken out as a conclusion, if the Court please. I asked for acts.

Mr. Loveland: If the Court please, he asked for it.

The Court: Wouldn't any answer to your question be a conclusion?

Mr. Greis: No, sir.

The Court: Why not? Nobody is guilty until proven to be so.

Mr. Greis: This defendant is testifying they were violating this law.

The Court: You asked for it and he has answered.
[fol. 64] Mr. Greis: I asked what act he was doing.

The Court: It may be I misunderstand the question. Repeat the question.

(The testimony was read by the stenographer as follows:

"Q. Were they engaged in any unlawful act or doing anything unlawful in your sight during that day?

A. Yes, I considered that they were.

Q. What?

A. Violating the gangster act.")

The Court: Allow the question to stand and answer.

Mr. Greis: Your Honor will allow me an exception?

The Court: You may have it.

Palmer M. Way, Judge.

Q. Did you see Lanzetti's family when you went in the house?

A. Yes, sir. I saw a woman in there that I was informed was Lanzetti's wife.

Q. Did you take part in the search of the house that you testified about?

A. No, sir, I did not search the house.

Q. No. Now you testified, and the Court has allowed the [fol. 65] question to stand, that they were violating the gangster act. Upon what do you base that information? Where did you get your information that that was being done?

A. I have known the Lanzetti's for several years.

Q. I asked where you got your information. You can answer the question.

A. From the Philadelphia Detective Bureau.

Q. Somebody told you, did they?

A. What are you referring to when you say did somebody tell me what.

Q. What is a violation of the gangster act?

A. Well, the paragraph which the defendants are indicted under, I think there is three or four different counts that comprise that specific violation.

Q. Right. Did you know at the time you went to Wildwood that these men had no lawful occupation?

A. No, sir, I did not.

Q. Did you know they were members of a gang?

A. I had reason to believe that, yes, sir.

Q. But you didn't know it, did you?

A. Not of my own knowledge.

Q. Of your own knowledge. That is two of the things, then, in the law, that you didn't know existed, but still you say they were violating the law; is that correct.

A. Yes, sir.

Q. And had you ever examined the record to find [fol. 66] out whether these men have been convicted of crime in the State of Pennsylvania?

A. I never examined any records.

Q. No. In other words, you didn't know any of the three things in the law that made them guilty of them, did you.

A. I knew of them, yes, sir.

Q. You knew of them through somebody's say so, did you?

A. Yes, sir.

Q. And you didn't know any of your own knowledge?

A. Not—

Q. Yes or no?

A. No.

Q. And still you have sworn under your oath that they were guilty under this act; is that right?

A. That is what I arrested them for, for violation of this act.

Q. You didn't have any warrant at the time you made these arrests, did you?

A. No, Sir.

Q. Defendants came over with you voluntarily?

A. Yes, sir.

Q. When did you tell the defendants what they were being held for, if at all?

A. When we arraigned them before the Justice of the Peace.

Q. That was how long afterwards?

A. How long?

Q. Yes.

[fol. 67] A. They were arrested about eight-thirty P. M. on the 24th, and they were arraigned about one P. M. on the 25th.

Q. In other words, about eighteen hours afterwards, is that right?

A. Probably about eighteen hours, yes, sir.

Q. And the conversation that you have testified about with the defendants at the Police Headquarters was on the same day that they were arrested, was it not?

A. In the evening of the day they were arrested, yes sir.

Q. In other words, the day they answered the questions that you have put into the record in your testimony, they didn't know what they were being held for, is that right? Didn't know until the next day?

A. That is correct.

Q. They gave you their correct names, so far as you know?

A. As far as I know, yes, sir.

Mr. Greis: That is all.

Mr. Loveland: All right, Sergeant.

DETECTIVE FRANK RUGGERIO, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

Q. Ruggerio, where do you live?

[fol. 68] A. I live in Vineland, but I am working out of Hammonton, New Jersey.

Q. What is your position?

A. Detective of the State Police of New Jersey.

Q. Detective of the State Police. Now, do you recall the Friday, July 24th, of going from Hammonton to Wildwood Crest?

A. I do.

Q. Will you please tell us what you did on that day?

A. On Friday, July 24th, I accompanied Sergeant Detective Kelly from Hammonton to Wildwood Crest. Upon arrival at Wildwood Crest I shifted over in the car containing Captain James Ryan and Detective Sergeant Harry Peltz and Detective Steinberg, and we made a cruise of the vicinity of Crocus Road and Jersey Avenue, Wildwood Crest. About eight-thirty * * * prior to that time we had met Captain Creeden and Sergeant Detective Kelly, who advised us—

Mr. Greis: Just a moment.

Q. Not what they said.

A. About eight-thirty I had seen Louis Del Rossi on the porch of 107 Crocus Road talking to a person who we

later found out was Ignatius. We cruised around the corner, came back, on Jersey Avenue south of Crocus Road, we picked the defendant Louis Del Rossi and his wife. The question was put to him, "Where do you live", and he says, "Right around the corner." Asked him who was [fol. 69] there. He said just Ignatius. So we went to the bungalow of 107 Crocus Road and we proceeded to search the bungalow for weapons and drugs.

Q. And did you find any?

A. No, sir.

Q. And then where did you go?

A. Why, we waited until Sergeant Detective Kelly came, when they were placed under arrest, and went to Wildwood Crest in the Police Department there, and from there went to the barracks here in Cape May Court House.

Q. Were you present when Sergeant Kelly was talking to the defendants?

A. Yes, sir.

Q. And will you tell us what conversation took place then?

A. I was present when Louis Del Rossi was being questioned as to his correct name, where he resided, and his occupation. When Mickey Britt and Ignatius were questioned I was in the room, but I didn't hear the conversation.

Q. I see. You did hear the conversation between Del Rossi and Kelly?

A. Yes, sir.

Q. Will you tell us what that was?

A. Why, he asked his name. His name was given as Louis Del Rossi. He lived on Carleton Street in Philadelphia. His occupation he gave as a chauffeur. And how old he was.

Q. Then I ask you if you were present the following day in the County Jail and were present at a conversation that took place between these defendants and Kelly?

[fol. 70] A. I was the one that questioned the three defendants.

Q. Oh, you were.

A. Yes.

Q. Tell us what was said and what was answered.

A. Why, I asked Ignatius Lanzetti when was the last time he was employed. He said he hasn't been employed for the last five years or more. Then asked Louis Del Rossi when he was employed, and he said it has been over two years. And I asked Mickey Britt the same question,

and he said he has not been employed since he came out of jail.

Mr. Loveland: Cross-examine.

Mr. Greis: No questions.

CORPORAL ALBERT J. WALDINGER, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

Q. Corporal, where do you live?

A. Cape May Court House.

Q. Are you in charge of the barracks here?

A. Yes, sir.

Q. Directing your attention to July 25th, I ask you [fol. 71] whether you were present with Sergeant Kelly and Ruggerio in the County Jail?

A. I was.

Q. When the defendants were questioned?

A. I was.

Q. Do you recall hearing the conversation?

A. I do.

Q. Will you repeat it?

A. Detective Ruggerio was talking to these three defendants. And he asked Del Rossi how long it has been since he has been employed, and he said it was over two years; and Lanzetti and Micky Britt he asked the same questions, and they both said it was a period of about five years. And he also asked their occupations. Lanzetti said he was a machine fixer. Del Rossi said he was a chauffeur. And Mickey Britt said he was a bricklayer by occupation.

Mr. Loveland: Cross-examine.

Cross-examination.

By Mr. Greis:

Q. Was Mickey Britt asked any questions about formerly being a boxer?

A. Not to my knowledge, no, sir.

Q. You knew he was, didn't you?

A. I heard rumors of it and remarks, but I didn't know definitely.

Mr. Greis: That is all.

[fol. 72] Mr. Loveland: That is all.

CAPTAIN JAMES P. RYAN, called as a witness on behalf of the State, being sworn, testified as follows: ?

Direct examination.

By Mr. Loveland:

Q. Mr. Ryan, where do you live?

A. 410 South 15th Street, Philadelphia.

Q. City of Philadelphia. What is your occupation?

A. Captain of Detectives in the City of Philadelphia.

Q. How long have you been a member of the Department?

A. Nineteen years.

Q. Do you know these three defendants?

A. I do.

Q. On Friday, July 24th, I ask you, Captain, whether you came to Wildwood Crest?

A. I did.

Q. And what did you do after you got there?

A. On—we received a letter on July 24th about four men we wanted in Philadelphia for a series of crimes. The letter give us a description and location——

Mr. Greis: Now, if the Court please, I object to that.

[fol. 73] The Court: Objection sustained.

Mr. Greis: I ask it be stricken from the record.

The Court: Yes, the part that is not responsive.

Q. What did you do this evening you got down to Wildwood Crest, Captain?

A. Well, we met—we met Ruggerio and Kelly in Ham-monton and proceeded to Wildwood Crest, where we were met by Captain Creeden. And riding in Wildwood Crest, why, we noticed Louis Del Rossi walking along with his wife, and stepped out and put him in the car and left his wife go, and said, "Where do you live at?" He said, "Over here, 107 Crocus Road." Whom do you live with?" He said, "Ignatius Lanzetti." I said, "Who is there in the

house with him?" He said, "His wife and kid", he says, "and Mickey Britt". So I taken him and put him in the car. We ride around the block, and drive around in front of the house. We got out, that is, Detective Peltz, Steinberg and Ruggerio and I step into the house, and take Ignatius—he is sitting reading a book—we take him upstairs and search the house. And during the course of the conversation I said to Ignatius, I said, "Where is the guns at?" He said, "You know I don't keep any of them things around where my family is." And at that time Kelly had—Kelly and McClure from our Department had Mickey Britt said that they caught them sneaking around an automobile.

[fol. 74] Mr. Greis: That is objected to, "they said".

The Court: Yes, it will be stricken.

Q. Not what they said.

A. So they said, "Well, we will take them in."

Q. Captain, do you know of a gang called the Lanzetti gang?

A. I certainly do.

Q. How long have you known it?

A. I have known the family practically all my life.

Q. Will you name some of the members of the gang?

Mr. Greis: Now, just a moment. If the court please, I object to this question until the proper foundation be laid. In other words, it seems to me necessary for more proof of the existence of the gang than has been offered, before we start with any members of it.

The Court: Why, Mr. Greis? The statute has been very free in the use of the word, apparently.

Mr. Greis: It seems to me that the statute has been not free.

The Court: Depends on the point of view.

[fol. 75] Mr. Greis: Exactly. But it has merely used the word.

The Court: All right.

Mr. Greis: Now, if we are to go by the definition that the cases have given the word, or that Webster's might give it, it seems to me we have a lot of things. And the statute has laid down no definition.

The Court: Now, in order to get down to the point—

Mr. Greis: Yes, sir.

The Court: —is it your thought that in laying this foundation, that there ought to be some testimony as to these men being in company with other men to the knowledge of the witnesses for a period of time and then let the jury determine as to whether a gang is formed or not? Or as to what is your objection? I want to see what you are getting at.

Mr. Greis: My objection is this. I don't know, and I don't think the Court can properly say, what the statute means by "gang", so that I think it is necessary for the Prosecutor to show a series of facts, whether it be congregating, or whether it be a man working on the section on the railroad that we used to know as a section gang, or whether it be the song, "That Old Gang of Mine"—what he means by "gang". In other words, a certain specific set of facts that [fol. 76] create what the Court can define as a gang.

The Court: It seems to me, as the word "gang" is used, that the Prosecution, in order to make the situation clear, may or may not lead up to what we might all understand as a definition of "gang", but if he doesn't see fit to, the jury is the body in this trial that determines facts. Under our peculiar position—I call it peculiar because I think it is, when that word "gang" is used, perhaps put it that way—for the jury to determine as to whether from the testimony there is a gang as indicated in the statute.

Mr. Greis: The substance of my objection is just this: that I object to the form of the question and the proof and the question that the Prosecutor asks in that he asks, "Are they members of a gang"? In other words, I want him to show, that is, to say what constitutes a gang.

The Court: Well, isn't that a proper question, because it calls for his knowledge, and his knowledge can be gone into and supplemented by the Prosecutor, or you have the privilege of cross-examination, to bring out his knowledge as to whether he may or may not know.

Mr. Greis: It calls for a conclusion, and I object to it upon that ground.

The Court: Anything further to say?

[fol. 77] Mr. Loveland: If the Court please, that is how we go about to prove this thing—whether I go all around and bring it in, or whether I ask a question direct,—the matter counsel is discussing is a matter for cross-examination if he wants to test this man's knowledge of what he thinks a gang is.

The Court: Do you want this question to stand?

Mr. Loveland: Yes, your Honor.

The Court: I think it is a proper question, and we allow it.

Mr. Greis: Your Honor will allow me an exception?

The Court: It will be granted.

(To which ruling the defendants, by their counsel, pray bill of exceptions, which is hereby allowed and sealed accordingly.)

Palmer M. Way, P. J. (Seal)

The Court: Now, then, at this time we will recess for one hour. We will be back at one-thirty. In the meantime ladies and gentlemen of the jury, you will be in charge of the officers, and they have instructions as to how to care for you during the noon hour. And everybody remain seated until the jury has been taken from the room by the officer [fol. 78] (Recess taken until one-thirty o'clock P. M.)

After Recess, 1:30 o'clock P. M.

CAPTAIN JAMES P. RYAN resumed the stand.

Direct examination (continued).

By Mr. Loveland:

Mr. Loveland: Please read the last question.

(The question was read by the stenographer as follows "Q. Will you name some of the members of the gang?")

Q. Go ahead, Captain.

A. The best way I could do that, your Honor, is to produce records of arrest of associates of these different members here.

Mr. Greis: That is objected to.

The Court: Objection sustained.

Q. Captain, I wish you would go ahead from your own knowledge and tell us the members of the gang that you know.

Mr. Greis: If the Court please, I ask that this be fixed within the time charged in the indictment. I object to the [fol. 79] testimony that goes outside of that.

The Court: Now, let me see what the force of your objection is here, Mr. Greis. You mean to state that to confine the proposition of the gang that existed at the date of the arrest.

Mr. Greis: Yes. And my authority for that is the case that the Prosecutor has cited in connection with this case a number of times, Levine against State, in which Justice Heher said:

"Of course, to justify a conviction in a case of this character, the proof must establish that status at the time of the defendant's apprehension."

The Court: What was the question?

(The question was read by the stenographer as follows: "Q. Will you name some of the members of the gang?")

The Court: You may answer that—members of the gang that were existing at the time of the arrest.

Mr. Greis: My request was that the time be fixed.

The Court: I fixed it. As of the time of the arrest.

[fol. 80] A. Why, five brothers, Pius, William, Lucien and Teo Lanzetti.

Mr. Greis: I object further that there are names now being brought in which are not served on us in the bill of particulars, and I ask that the prosecution be confined to the names that were given us in the bill of particulars on that particular question, and for that purpose ask that the names of Lucien and Teo be stricken from the record.

The Court: Just a moment until I see what has happened in the questions and the answers, in the request for bill of particulars and reply.

Mr. Loveland: We are willing to confine ourselves to those which we submitted to the defense. If he has mentioned names that were not in the list which we furnished, why, we consent that they be stricken.

The Court: Of course those names will be stricken, but I am not familiar, of course, with the bill of particulars and the answers. For me to sit here and attempt to limit anything without any knowledge of what has taken place, I cannot very well do it.

Those two names will be stricken that you objected to, because it is quite apparent they were not included in the answers.

Mr. Greis: That is right.

[fol. 81] The Court: Proceed.

The Witness: John Amato. Edward Di Alanzo, alias Cowboy.

Mr. Greis: That name was not in the list, if the Court please. I object to it and ask it be stricken.

The Court: That will be stricken.

Mr. Greis: Now, if the Court please, I think it is prejudicial to these defendants that this naming of persons not in here continue.

The Court: Well, now, how are we going to arrange it? This man is stating that he knows the members of this gang. He has given testimony in connection with it. He probably doesn't know anything about the bill of particulars, either. But the State is bound by what they give you, and let the issue run with that information.

Mr. Greis: I understand the situation.

The Court: Now, if you and the Prosecutor can straighten matters out, I will be glad for you to confer. If not, it will have to run; that is the only way of handling it.

Mr. Loveland: That is, if counsel feels it it desirable that I do it in another way, I will take the bill of particulars and ask him in particular each one. I am willing to do that.

[fol. 82] Mr. Greis: I won't make any further objection.

The Court: All right.

Mr. Greis: Except that I will ask that they be stricken.

The Court: All right. Proceed. Give your names and Mr. Greis will check.

The Witness: George Myers.

Mr. Greis: I ask that be stricken.

Mr. Loveland: I am trying to get the original.

The Court: Do you want to wait for it?

Mr. Loveland: Yes, I have sent for the original.

Q. You may proceed.

The Court: No; there is an objection to this last name. What was it?

The Witness: George Myers.

Mr. Loveland: We consent to that.

The Court: All right.

Q. You may proceed, Captain.

A. Mikey Mateo.

Mr. Greis: That name is not in the list, if the Court please. I ask it be stricken.

[fol. 83] Mr. Loveland: All right.

The Witness: Albert Salvatore Mateo.

Mr. Greis: That is objected to, and I ask it be stricken.

The Court: That is, this last one.

Mr. Greis: Yes.

The Court: Let me hear, Mr. Prosecutor, if you are consenting.

Mr. Loveland: I am consenting.

The Court: Please respond each time.

Mr. Loveland: All right.

Q. Proceed.

The Witness: Your Honor, I have all these names on these records. Of course, going over these names right now, it is going to take time. The reason why I associate these names, we have the connection with each of these here names with the rest of these people mentioned here.

Mr. Greis: Now, if the Court please, if that is the basis upon which this witness is testifying, I ask all of his testimony be stricken.

[fol. 84] The Court: No, he is apparently testifying from his memory so far.

Mr. Greis: He said he was testifying from arrests that had been made.

The Witness: My knowledge—the names, I just gave them to you, I know them of my own knowledge.

The Court: Anyone else?

The Witness: John Zokowsky, alias Socks.

The Court: That is apparently in the list.

Mr. Greis: Yes, sir.

Q. Yes, Proceed.

A. I am trying—Joseph Siai.

Mr. Greis: I ask it be stricken.

Mr. Loveland: Consented to, your Honor.

The Witness: There is quite a list of these names, but I just can't recall just now.

Q. I ask you, Captain, whether these three defendants are members of the Lanzetti gang?

A. They sure are.

Q. I ask you how long you have known these defendants are in the Lanzetti's?

[fol. 85] A. I have known the Lanzetti's as I said before, practically all my life. I have been familiar with the man mentioned here in the last eighteen years—last fifteen years. And Falcione, I have known him since 1923, 1924. And Fatty Louie, I have known him for about twelve years. I think that would cover it.

Q. How long has the gang been in existence, Captain?

Mr. Greis: That is objected to, if the Court please.

The Court: If he knows, I am going admit it.

Q. Of your own knowledge.

Mr. Greis: May I state my objection upon the record?

The Court: If you want to.

Mr. Greis: I think the Court has already ruled that—upon my objection, that it be—the names of membership in the gang be limited to the period charged in the indictment, and this is based upon the same ground.

The Court: Well, he has spoken of the three members, the Prosecutor has, and he is referring to this gang, consisting [fol. 86] of the defendants and these three additional members. Now I think that is your question, is it not?

Mr. Loveland: Yes, I am asking how long he has known this gang to have been in existence.

The Court: This gang, consisting of the three people that have been mentioned, in addition to the three defendants. Is that right?

Mr. Loveland: Yes, your Honor, I am just asking if these were members of the gang. He testified they were, and I have asked him how long he has known—

The Court: That is the way I understand it. I will admit the question.

Mr. Greis: Your Honor will allow me an exception.

The Court: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

Palmer M. Way, P. J. (Seal.)

A. About five or six years. That is, this present gang I mentioned.

[fol. 87] Q. Can you tell us what kind of a gang it is, Captain?

A. Well, from our experience with them, none of them have any——

Mr. Greis: Just a moment, if the Court please. That answer apparently does not—is not responsive to the Prosecutor's question, so I object to it. Calls for a conclusion, and the witness prefaces his answer with "our experience".

The Court: I think you will have to keep within your proof, Prosecutor.

Mr. Loveland: Yes, your Honor.

Q. Captain, I don't want you to testify to anything other than your own personal knowledge. Now I ask you from your own personal knowledge can you tell us anything of what kind of a gang it is?

A. The gang is connected with numbers, and at one time, your Honor, there were—unless—at one—they was connected with numbers and other rackets in Philadelphia.

Mr. Loveland: You may cross-examine.

Cross-examination.

By Mr. Greis:

Q. Captain, where did all this take place that you speak of?

A. All what? Numbers?

[fol. 88] Q. Yes.

A. In one——

Q. What place; that is all I want to know.

A. I just can't recall the address on Broad Street where they were arrested.

Q. What city?

A. Philadelphia.

Q. In the State of Pennsylvania, is that correct?

A. That is right.

Q. And you say that gang that you speak of is some five or six years ago?

A. Yes. From five or six years on, on to the present date.

Q. Yes. And when did you last see any of these three defendants as connected with any gang prior to the day of the arrest?

A. Well, I probably say nine months.

Q. About nine months before that?

A. Yes.

Q. And the things that you mention, numbers and other rackets——

A. Yes.

Q. Has there within five or six years been any conviction or charge against these men for that reason?

A. That numbers? Yes, sir—these men here?

Q. Yes.

A. No, sir.

Q. Captain, how long had it been prior to your visit to Wildwood on July 24th—is that the date?

A. That is right.

[fol. 89] Q. How long had it been prior to that time that you had seen any of these three men?

A. Why, I would say about nine months.

Q. About nine months?

A. Yes.

Q. And that was where? In the City of Philadelphia?

A. That is right.

Q. You knew that Falcone was a prize fighter at one time?

A. Yes, I knew of it; yes, sir.

Q. And you know that he fought under the name of Mickey Britt; is that correct?

A. Yes.

Q. Will you tell us now what was the occasion of your visit to Wildwood on the 24th of July?

A. Yes. We had information—I spoke of a letter we received, and it instructed us to go to——

Q. Was it connected with these defendants?

A. None whatever.

Q. Not connected with these defendants?

A. No, sir.

Q. But you just happened upon these men while you were in Wildwood; is that correct?

A. Location—give us the location of this here—of these people mentioned; but at the time, why, we were in search of men for the hold-up that happened in our city.

Q. And these were not the men, were they?

A. They were not the men it mentioned.

Q. You had no warrant at the time—for these men, at the time you made the arrest?

A. No, sir.

[fol. 90] Q. And you had no warrant for a search of the premises?

A. No, sir.

Q. But you made a search of the house?

A. Yes. We thought we probably might find the people we were looking for, besides those men.

Q. You were a member of the Philadelphia Police Department?

A. Right.

Q. At whose suggestion were these men taken into custody on the date that you walked in on them there?

A. Well, I told Sergeant Kelly and—who these men were, and decided to take them in, and charge them with being gangsters.

Q. Did you know about the New Jersey gangster law?

A. I didn't at the time, no.

Q. Are you sure about that?

A. I say I didn't know at the time, no sir.

Q. Who sends out information from the Philadelphia Police Department that certain people are wanted?

A. The Police Department. We do.

Q. You do. Your department?

A. Yes.

Q. Are you in charge of that?

A. Not in charge of it, no. I am — charge of the Detective Bureau.

Q. You mentioned only two names that were allowed by the Court in this list here, aside from the two brothers Lanzetti and the defendants. John Zokowsky was one of them?

[fol. 91] A. Yes, sir.

Q. Where is John Zokowsky?

A. In the death house, awaiting for the electrocution.

Q. How long has he been there?

A. Two years, I believe.

Q. How long?

A. A little over two years.

Mr. Greis: Now, if the Court please, on the limitation that was put on this defendant's testimony by the Court in the first place, the gang that existed on the date of the arrest, I ask that that name be stricken. He has been in the death house for two years. Certainly could not have been——

The Witness: Hasn't been in the death house. He has been in jail in custody.

Q. He has been in jail in custody. He has not been a member of the gang in that time?

A. He has been a member up until the time of the arrest.

Mr. Greis: I understood the Court's limitation, it was on the date of the arrest.

The Court: I am permitting you to adduce such testimony as you can bring out on cross-examination. You may use it with the jury. I will let that testimony stand.

Q. Let me ask you this question, Captain: This business [fol. 92] you mention as numbers, is that an illegal proposition?

A. It is in our state, yes, sir.

Q. It is contrary to the laws of Pennsylvania?

A. Yes, sir.

Q. Now, have there been any arrests or conviction of these men in that connection, any of these three defendants, Willie Lanzetti or Pius Lanzetti?

A. Willie Lanzetti has been, yes, sir. Willie and Lucien both have been arrested for numbers and convicted.

Mr. Greis: I ask the testimony concerning Lucien be stricken out as not responsive. The name was stricken from the list.

The Court: Didn't you ask him a question and give the man's name?

Mr. Greis: I didn't ask for the brother who is not in here, not charged as a member of this gang.

The Court: Didn't you ask for Lucien? Let me have the question.

(The question was read by the stenographer as follows: "Q. Now, have there been any arrests or conviction of these men in that connection, any of these three defendants, Willie Lanzetti or Pius Lanzetti?")

[fol. 93] The Court: Willie or Pius are the only ones used.

The Witness: Willie Lanzetti is the one arrested and convicted for numbers.

Q. When?

A. 1934 or 1935, I believe.

Q. Don't you know?

A. I would have to consult this—these—this folder.

Q. There are no detainers nor warrants out for these men, are there?

A. No, sir.

Q. They are not wanted in the city of Philadelphia?

A. No, we don't want them in Philadelphia.

Q. If there had been any charges against them, you would have had them extradited to Philadelphia, wouldn't you?

A. I guess so.

Mr. Greis: That is all.

Mr. Loveland: Captain Creeden.

JOHN J. CREEDEN, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

[fol. 94] Q. Captain Creeden, are you connected with the Philadelphia Police Department?

A. I am.

Q. And have been so connected for how long?

A. A little better than twenty-six years.

Q. Do you know the defendants here?

A. I do.

Q. Do you know of a gang called the Lanzetti gang?

A. I know some of them.

Q. Can you tell us whom you know of them?

A. Well, there is four of the Lanzetti boys. They are classified as the Lanzetti gang. They are constantly together and it — very rarely you see—you meet them that there are not at least two together; and we classify those that are associated with them as part of the Lanzetti gang.

Q. Now, do you know any other member?

A. Through police channels and police reports I know quite a few.

Mr. Greis: That is objected to, if the Court please.

The Witness: Personally I know——

Mr. Greis: The source is hearsay.

The Court: Well, he has not named anyone yet, Mr. Greis, [fol. 95] and I am going to let it stand so far, unless something happens. Personally you what?

The Witness: Personally I could call just a few of them off.

Q. Let's have those that you know personally, Captain.

A. Julius Fink.

Mr. Greis: That name is objected to, if the Court please. Not within the bill of particulars.

Mr. Loveland: We consent.

The Court: Consented to. It may be stricken.

Q. Continue, Captain.

A. Michael Amateo.

Mr. Greis: That name has already been objected to once before, may it please your Honor.

The Court: That is objected to.

The Witness: Tony Narcise.

The Court: Tony what?

The Witness: Tony Narcise.

[fol. 96] The Court: That is in the list. Anthony Narcisi.

Q. Continue, Captain.

A. Walter Zokowsky I think is the right name.

Mr. Greis: That is not in the list. There is a John Zokowsky in there.

The Court: What was the last name, Captain?

The Witness: Zirkowsky I think is the last name.

Mr. Loveland: If my memory serves me as to the list—

The Court: What was the first name?

Mr. Greis: Walter.

The Witness: Walter, I believe it is.

Mr. Greis: Walter. That is not in the list and I ask it be stricken.

Mr. Loveland: Consented to.

The Witness: Louis Campbell.

The Court: That is in the list apparently. Proceed.

[fol. 97] The Witness: That is all I can think of offhand.

Q. That is all you can think of offhand, you say, Captain?

A. Yes, sir.

Q. These defendant/s are known to be a member of a gang?

A. We recognize them as a member of the Lanzetti gang.

Mr. Loveland: Cross-examine.

Cross-examination.

By Mr. Greis:

Q. Captain, where is Louis Campbell?

A. Louis Campbell? I think he is imprisoned in this state. I am not sure.

Q. Do you know how long he has been there?

A. I couldn't tell you without looking at the records.

Q. When did you last see him?

A. Couldn't tell you that, without referring to police record.

Q. Well, that has not been in recent years, has it?

A. I don't think I have seen Campbell for three or four years. I couldn't say definitely.

Q. How long since you have seen Tony Narcise?

A. Possibly four years.

[fol. 98] Q. About four years?

A. Possibly four years. I have seen Narcise and Louis together, last time I seen them in the Bureau.

Q. Louis who?

A. Del Rossi.

Q. Saw them together four years ago?

A. I should judge that was four years ago.

Q. And is that what you base your conclusion on that he—that they are members of the gang?

A. No.

Q. That you saw them together four years ago?

A. Constant reports I get, written and verbal, from the men of the Bureau.

Q. I see; and it is not from your own knowledge, it is from the reports that you have from others?

A. I have formed my opinion from the knowledge I gained through police channels and police report.

Q. And you have told all that you know about it personally?

A. About whom?

Q. About Campbell and Narcise?

A. That is all I have heard from them, is the reports, is all. That is the last time I have seen them.

Mr. Greis: That is all.

[fol. 99] Redirect examination.

By Mr. Loveland:

Q. Captain, you say you have not seen Narcise for the past four years, approximately?

A. I may have seen him since then, but I am satisfied the last time I seen Narcise was the time of the arrest in the Bureau, brought into the Bureau.

Q. I ask you whether or not the Philadelphia Police Department want him?

Mr. Greis: That is objected to as not relevant or material.

Mr. Loveland: I might explain the reason why.

The Court: You are on re-direct, Mr. Prosecutor.

Mr. Loveland: But what I was getting at, the defense brought out the fact that the Captain has not seen this man during the past four years. I was trying to find out if there was any reason.

Mr. Greis: That doesn't make any difference, if the Court please.

The Court: Let me have the question.

Mr. Loveland: I will not press it. I will withdraw it.

The Court: If you want it, we will see whether it is proper or not.

[fols. 100-104] (The question was read by the stenographer as follows: "I ask you whether or not the Philadelphia Police Department want him?")

The Court: That does not seem to be in the——

Mr. Loveland: I will withdraw that. I thought they opened it up far enough for me to question.

The Court: No.

Mr. Loveland: That is all, Captain.

[fol. 105] FRANCIS J. DUNN, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

Q. Mr. Dunn, you are a member of the Philadelphia Police Department?

A. Yes, sir.

Q. I ask you whether you made the arrest of Frank Pius Lanzetti in 1924?

Mr. Greis: That is objected to, if the Court please.

The Court: What was the question?

(The question was read by the stenographer as follows: "Q. I ask you whether you made the arrest of Frank Pius Lanzetti in 1924?")

The Court: Mr. Prosecutor, at this time, I don't see—

Mr. Loveland: It is incumbent on the State to prove conviction of these defendants, and the State is endeavoring to do that, if your Honor please.

The Court: I see what you are getting at now. Don't you think you better go at that another way?

[fol. 106] Q. Mr. Dunn, did you ever arrest Frank Pius Lanzetti?

Mr. Greis: That is objected to.

The Court: Objection sustained.

Q. Mr. Dunn, I ask you whether you were in court on April 3rd, of 1934, in the City of Philadelphia at the time Frank Pius was on trial?

Mr. Greis: That is objected to, if the Court please.

The Court: Question allowed. That probably will lead—no harm in the question itself. Must be followed up in order to permit me to admit it.

Mr. Greis: Withdraw the objection.

Q. Will you answer that question?

A. Yes, sir.

Q. I ask you whether there is anyone present here today who was on trial at that time?

A. Yes, sir. Lanzetti. Ignatius Lanzetti.

Q. Is he one of the defendants here?

A. He is, yes.

Q. I ask you whether you know the results of the trial?

Mr. Greis: That is objected to, if the Court please.

The Court: Objection sustained because of the fact there [fol. 107] is no indication of what kind of trial, whether a conviction or what not.

Q. I ask you whether you know, Mr. Dunn, whether this defendant, Frank Pius Lanzetti, was on trial at that time, and if you know what the charge was.

Mr. Greis: That is objected to.

Mr. Loveland: He was present there, and I am asking whether he knows or not.

The Court: What the charge was. We will find out whether he knows.

Mr. Greis: If the Court please, I object to this, upon the ground that there is a proper way to prove this by the best evidence. That is, the announced purpose of the Prosecutor is to prove the conviction, and all we ask is he go about it in the proper way.

The Court: All he has to be asked, if the man is present in court, and what took place. Put it that way.

Mr. Loveland: I have just asked that question.

The Court: It is not necessary to ask him any preliminary questions?

Mr. Loveland: May we have that question again? (The question was read by the stenographer as follows: "Q. I [fol. 108] ask you whether you know, Mr. Dunn, whether this defendant, Frank Pius Lanzetti, was on trial at that time, and if you know what the charge was?")

A. Yes.

Q. Do you know?

A. Yes, sir

The Court: I will let that stand. But it will not remain standing unless I find that it is proper to admit it.

Mr. Greis: Your Honor will allow me an exception?

The Court: Granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

Palmer M. Way, P. J. (Seal.)

Q. Now, I ask you whether or not Frank Pius Lanzetti was at that time convicted of the charge for which he was on trial?

A. No, sir. Plead guilty.

Q. Plead guilty. (Showing paper to witness.) I ask you to look at that and ask if that is the record of those proceedings?

A. Yes, sir.

Q. (Showing witness another paper.)
[fol. 109] A. Yes, sir.

Mr. Loveland: At this time I offer the record, exemplified copies of the proceedings in Philadelphia, covering the conviction against Frank Pius Lanzetti.

The Court: In the first place, we must know for what crime.

Q. Do you know what crime?

A. Yes, sir.

Q. What crime?

Mr. Greis: Just a moment. I object to that, if the Court please.

The Court: Object to what?

Mr. Greis: The question of what crime it was.

The Court: What?

Mr. Greis: The question of what crime it was. Absolutely incompetent, irrelevant and immaterial.

The Court: Let me get this man's qualifications. I don't know what position he is holding. I was busy with the clerk.

Mr. Loveland: This witness testified that he was a member of the Philadelphia police department, that he was in [fol. 110] the court room at the time this trial took place, and you can't get better evidence than that. He says he knew what happened, and I am asking now whether he knew what crime this defendant was charged with.

The Court: Charged or convicted of?

Mr. Loveland: He said he plead guilty. I have shown him the record of the proceeding.

The Court: I will permit the question, to find out if he knows what he plead guilty to, of what charge.

Mr. Greis: Exception.

The Court: Exception granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

Palmer M. Way, P. J. (Seal.)

A. He plead guilty to the unlawful possession and sale of narcotic drugs.

Mr. Loveland: I renew my offer of the introduction of the exemplified copy of the proceedings.

Mr. Greis: If the Court please, while I was looking at [fol. 111] these papers I didn't get the answer to the last question. May I have it repeated?

The Court: Yes; Mrs. Moore will read it for you. (The answer was read by the stenographer as follows: "A. He plead guilty to the unlawful possession and sale of narcotic drugs.")

Mr. Greis: Now, if the Court please, the document here produced, the certified copies of the records, don't show that. The plea that was entered here by one Frank Pius, without any name "Lanzetti" being expressed in the documents, is for possession only.

Mr. Loveland: I think that question is covered. I asked the defendant whether anyone present here today was on trial in the court at that time; he said there was, and I asked him who it was, and he told us it was Lanzetti.

The Court: I think perhaps the identification is sufficient. The question has to be whether the testimony of having heard a confession or having heard a plea amounts to a conviction, is the same as that which you are attempting to show here by the exemplified copies. Apparently there is an inconsistency, Mr. Prosecutor, and you have no foundation for the presentation of something that you have not already spoken about. Do you understand what I mean?

Mr. Loveland: No, I do not.

[fol. 112] The Court: Well, your conviction sets forth one crime. The witness has testified that he was present at the time, and there was another crime committed in addition, as I recall the statements in the testimony. If that is so, of course the exemplified copies cannot go in.

Q. Now I ask you, Mr. Dunn, whether the defendant on trial who plead guilty on April 3rd, 1924, under the name of Frank Pius, is the same person sitting here as a defendant in these proceedings, under the name of Ignatius Lanzetti?

A. Yes, sir. There is three brothers. He is one of them.

The Court: Just answer the question.

The Witness: Yes, sir, He is the man. Three brothers.

Q. He is the man that plead guilty?

A. Yes, sir, They all plead guilty.

Mr. Greis: I ask that it be stricken out as a voluntary statement and not responsive, not material.

The Court: Yes; that may be stricken out, that latter part.

Q. Now I ask you whether or not these proceedings (showing paper to witness) set forth the results of what took place on that day?

[fol. 113] A. Yes, sir.

Mr. Loveland: Now, if the Court please, I renew my offer, and the records in these proceedings speak for themselves. And if there is any question about it, it is a matter for cross-examination, because our Evidence Act, Section 1—under the constitution you must give full faith and credit to the records and proceedings of the other states. Now this defendant—this witness has testified he was in court on this day and he said that they plead guilty to unlawful possession and sale of drugs. I think that was it. And if the records do not speak that, why, that is a matter for cross-examination. This is an exemplified copy of the proceedings and must be given full faith of what happened.

Mr. Greis: Now, if the Court please, the witness testifies to one thing and the evidence produced here just exactly contradicts that.

The Court: Well, Mr. Greis, now he says, after having looked at the exemplified copy, that that statement set forth in the exemplified copy is what transpired that day; so I think that has been cured, and I will admit it.

(The papers offered are received in evidence and marked Exhibit S-1 and Exhibit S-2.

Mr. Loveland: That is all. Cross-examine.

[fol. 114] Cross-examination.

By Mr. Greis:

Q. Mr. Dunn, when was the last time that you had seen Ignatius Lanzetti?

A. The last time I saw him was when he got out of jail.

Q. Out of jail?

A. Yes, sir.

Q. How long ago was that?

A. I believe 1925 or 1926.

Q. Yes.

A. 1925, I believe it was.

Q. Now, you saw him when he came back from Detroit, didn't you?

A. No, sir. I think he only got out that day or the day after from the County Prison.

Q. How long have you been a member of the police department of Philadelphia?

A. Seventeen years.

Q. Still a member?

A. Yes, sir.

Q. Been continuously all this time?

A. Yes, sir.

Q. It has been since 1925 since you have seen this man before today, is that right?

A. See him in—outside of seeing him on the street, yes; that is, to see him anywhere where I would be looking for him.

Q. I asked you that question, when was the last time you [fols. 115-117] saw him; you said when he came out of jail in 1925.

A. 1925. Yes. I might have seen him since then in passing him, and wouldn't remember.

Q. Yes. Unless you gave me that answer you couldn't say he had been in jail, could you; is that the idea?

A. That is—I gave you what answer?

Q. That the last time you had seen him was when he came out of jail in 1925?

A. I remember that specifically. If you want me to explain it, I will explain why I remember that.

Q. I want to know when you saw him last after that.

A. After that?

Q. Yes.

A. I don't know if I have ever saw him since.

Q. Don't know whether you have or not?

A. He might have been in the car with other ones; I don't know.

Mr. Greis: That is all.

[fol. 118] CHARLES STEINBERG, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

Q. Mr. Steinberg, are you a member of the Philadelphia Police Department?

[fol. 119] A. Yes.

Q. Do you know the defendants here?

A. Yes, sir.

Q. Do you know of a gang called the Lanzetti gang?

A. Yes, sir.

Q. Are these defendants members of it?

A. Yes, sir.

Q. Do you know others who are members of it?

A. Yes, sir.

Q. Name them.

A. John Schiavo. John Amato.

The Court: Slowly, please.

Q. Just one at a time.

The Court: John Schiavo apparently is in the list. Proceed.

The Witness: John Amato.

The Court: Apparently is in the list.

The Witness: Max Rothman. Willie Lanzetti.

The Court: Just a minute.

Q. What was that name?

A. Willie Lanzetti.

The Court: Rothman—oh, yes, I see it.

[fol. 120] Loveland: William Lanzetti was the last one.

The Court: Yes. Proceed, unless there is an objection after a reasonably short pause.

The Witness: Michael Mateo.

Mr. Cafiero: Not on the list.

Mr. Greis: I ask that one be stricken.

Mr. Loveland: Consented to.

The Court: Proceed.

The Witness: Frank Mateo.

Mr. Greis: I ask that the name be stricken; not on the list.

Mr. Loveland: Consented to, your Honor.

The Witness: I can't think of any more right now.

Mr. Loveland: Cross-examine.

Cross-examination.

By Mr. Greis:

Q. When did you last see Max Rothman?

A. About eighteen months ago.

[fol. 121] Q. About eighteen months ago. Have you seen him since that time?

A. I can't say that—I don't recall.

Q. Don't you know for a fact that Herman Rothman is not friendly with any of these men?

A. He was in company—

Q. Just answer that yes or no.

A. What was that? How is that question?

Q. Don't you know that Max Rothman is not friendly with any of these men?

A. I don't know him not to be friendly with them. I know him to be friendly with them.

Q. You think he is friendly with them?

A. Yes, sir.

Q. How long ago was that that you know him to be friendly?

A. Since I seen him last, and I have never heard that he was not friendly with them.

Q. That is eighteen months ago?

A. I have never heard since that he was not friendly with them.

Q. Do you know anything about his connection with any of these men or with anybody else since that time, since eighteen months ago?

A. Not offhanded, I can't say.

Q. Now you mentioned John Schiavo?

A. Yes, sir.

Q. He is the clerk of a court for somebody?

A. That is not the Schiavo.

Q. That is not the one. What one are you talking about?

A. I am speaking of another Schiavo.

[fol. 122] Q. John Schiavo, 811 South 11th Street, Philadelphia.

A. The gentleman you are referring to does not live there.

A. I am referring to a John Schiavo with a known criminal record that I know, that lives in South Philadelphia.

Q. Doesn't live at 811 South 11th Street?

A. I can't give you the exact address now.

Q. Well, the John Schiavo at 811 South 11th Street is clerk of Magistrate O'Malley's court?

A. There is a John Schiavo, a clerk, I know.

Q. That is his address, isn't it?

A. Not as far as I know, no, sir. He lives on Franklin Street, as far as I know.

Q. Don't you know he has moved from Franklin Street down to 811 South 11th?

A. Didn't know that, no, sir.

Q. Or has moved from this address to Franklin Street, one or the other?

A. The Schiavo I know lives on Franklin Street. I have known him for nine or ten years, and I know him to live down there. No, I wouldn't say that—I have known him six years, anyway, and known him to live on Franklin Street.

Q. Well, is the man that you are speaking about the one who lives now or did live in the past at 811 South 11th Street?

A. I didn't know the exact address where he lived. I knew he lived down in that section.

Q. Is he the same man or isn't he?

A. No, sir, he is not the clerk of the magistrate's court.

[fol. 123] Mr. Greis: If the Court please, I ask that the testimony concerning that witness on this mistaken identification be stricken out, because our list has a name and address that is the name we refer to. Apparently it is some one else of the same name, who is not in our list.

The Court: What right do you think you have to strike it? You brought out facts stating the address of a John—what is he name?

Mr. Greis: Schiavo.

The Court: There is some confusion about the address. I think I will leave the matter stand.

Mr. Greis: Your Honor will allow me an exception.

The Court: Grant you an exception.

(To which ruling the defendants by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

Palmer M. Way, P. J. (Seal.)

Q. When is the last time before today that you saw these three defendants here?

A. The time of their arrest.

Q. You were here at the time of the arrest?

A. Yes.

[fols. 124-131] Q. When prior to that did you last see them? That was July 24th, I believe, wasn't it?

A. Yes, sir.

Q. When was the—how long before that?

A. Between then—numerous—Louis I have seen about three times between the first of the year and then, or latter part of January and then.

Q. Where at?

A. On the street.

Q. Where? What city? What state?

A. In Philadelphia.

Q. Philadelphia, Pennsylvania?

A. I don't recall seeing the other two defendants.

Q. Haven't seen them for how long before—or had you ever seen them before the day of the arrest?

A. I seen Lanzetti about three or four years prior to their arrest.

Q. Three or four years prior. Did you ever see Mickey Britt?

A. I don't recall.

Q. Don't recall ever having seen him? Don't recall ever having seen him?

A. I wouldn't say—I have seen him but I just can't recall when it were.

Mr. Greis: That is all.

[fol. 132] GEORGE MUHS, called as a witness on behalf of the State, being sworn, testified as follows:

Direct examination.

By Mr. Loveland:

Q. Mr. Muhs, are you a member of the Philadelphia Police Department?

A. I am.

Q. How long have you been a member?

A. About twelve years.

Q. Do you know the defendants here?

A. I do.

Q. Do you know the gang called the Lanzetti gang?

A. I do.

Q. Are these defendants members of that gang?

A. They are.

Q. Do you know other members of the gang?

A. I do.

Q. Will you please tell us who — are?

A. John Amata, Hyman Cohen, Daniel Falcone, Tony Narcise, Max Rothman, Felix DiTullio, and Teo Lanzetti.

[fol. 133] Mr. Greis: That name was objected to, and I ask it be stricken.

Mr. Loveland: Consented to.

The Witness: Willie Lanzetti, and Pius Lanzetti.

Mr. Loveland: Cross-examine.

Cross-examination.

By Mr. Greis:

Q. Do I understand you to testify that Hyman Cohen—

A. Hyman Cohen.

Q. —is a member of the Lanzetti gang?

A. He is friendly with that gang, yes.

Q. He is?

A. He is.

Q. What do you mean, that he is friendly with them?

A. Well, they are all associated together; you see them congregating together at times.

Q. And that in your mind means membership in the gang, does it?

A. Well, they don't have what you call a membership card, but they are congregated together.

Q. Are any of these names that you have stated here members of this gang?

A. They are all associates of one another, all work together.

[fol. 134] Q. I asked you the word "member". Will you answer that, please?

A. Yes.

Q. They are all members, are they?

A. Yes.

Q. Is Hyman Cohen a member?

A. He is.

Q. At the present time?

A. Well, can't say right at the present time, no.

Q. When can you say that he was a member of it?

A. Oh, about two years ago.


Q. About two years ago?

A. Yes.

Q. And you don't know anything about him in the last two years?

A. No, I don't.

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Q. Then you qualify your answer to my first question, "Is he a member of the Lanzetti gang?" and you say that he was two years ago; is that right?

A. Yes.

Q. How about Felix DiTullio; when was he a member?

A. Oh, around about two years ago.

Q. About two years ago. Since that time he has been in the States Prison, is that right?

A. He is in Trenton prison now.

Q. That is right. Do you know whether going to prison would terminate his membership or not in the gang?

[fol. 135] A. Well, it all depends what you determinate membership.

Q. That is what I want to know. I want you to tell me. Is he a member of the gang if he is in States prison?

A. There is such a thing as helping a man out when he is in prison, yes.

Q. And you think he is still a member, is that it?

A. I would say yes.

Q. How about Daniel Falcone?

A. Yes.

Q. Where does he live?

A. Why, he lives around Catharine Street, South Philadelphia, somewhere; I just don't know just the exact place where any of them live, as far as that goes.

Q. And what leads you to believe he is a member of this gang?

A. See him associate with them.

Q. When?

A. Friendly with them.

Q. When last?

A. Oh, I haven't seen Daniel Falcone—about two years ago I guess I saw him.

Q. About two years ago. Do you know that Daniel Falcone is a relative of the defendant Michael Falcone?

A. His brother.

Q. It is his brother?

A. Yes.

Q. Are you sure of that?

[fol. 136] A. Well, I stopped him and asked him, and he said he was his brother; he told me that.

Q. Said he was his brother?

A. That is what I am taking his word for it.

Q. What does he look like?

A. Well, he resembles Mickey Britt to a certain extent.

Q. Looks like Mickey, eh?

A. Yes.

Q. Where is the office of the Philadelphia Police Department?

A. City Hall—well, headquarters, City Hall.

Q. Headquarters in City Hall?

A. Yes.

Q. Would it surprise you if I told you Daniel Falcone is working right there in the City Hall?

A. Not the Falcone that I have reference to.

Q. Not the one you mean?

A. No, sir.

Q. Which one do you mean, then?

A. Well, the Daniel Falcone I am speaking of and classing as Mickey Britt's brother is a fellow hangs in the cigar store at Broad and Rodney at the time I used to go in there and see who was in there.

Q. And how long ago was that?

A. Two years ago.

Q. Two years ago?

A. About two years ago.

Q. There is only one Daniel Falcone, as far as you know?

A. Well, there could be others that I don't know of.

[fol. 137] Q. How long ago did you see Tony Narcise?

A. Oh, better than two years, I guess.

Q. Over two years?

A. Yes.

Q. How long since you saw Max Rotherman?

A. About the same time; around two years ago.

Q. Is that the last personal knowledge that you have concerning these men?

A. Yes.

Q. Outside of the reports by somebody else? I mean your own personal knowledge, what has come to your personal attention.

A. What I have seen myself.

Q. Yes.

A. Yes.

Q. And that is the last?

A. Yes.

Q. When did you last see Ignatius Lanzetti before today or before the time of the arrest?

A. About a year ago.

Q. About a year ago?

A. About a year ago.

Q. And when did you last see Mickey Britt and Michael Falcone?

A. I haven't seen him in about eighteen months, I guess.

Q. Eighteen months. And how long since you saw Del Rossi before the time of this arrest?

A. About the same—last time I seen him. Del Rossi and Mickey Britt were together.

Q. About a year?

A. It is about a year ago; around in there.

[fols. 138-150] Q. You said you did not know Daniel Falcone's address, did you?

A. No, I don't. I don't know any of these addresses, I see.

Mr. Greis: That is all.

[fol. 151]

(In Chambers)

MOTIONS FOR DIRECTED VERDICT

Mr. Greis: Now, if the Court please, I move for the direction of a verdict of acquittal for each of the three defendants, on the following grounds:

First, that in the indictment itself no act is alleged to have been committed that controverts any penal statute of the State of New Jersey.

Second, that the indictment fails to charge a crime, fails to set forth the date, place or tribunal of any alleged conviction in the State of Pennsylvania or elsewhere, and that the indictment is otherwise vague, uncertain and indefinite.

The Court: Is that all under number two, Mr. Greis?

Mr. Greis: Yes.

Third, that the charge laid under the indictment and, in fact, the indictment itself under which the charge is brought, violates Article IV, Section 2 of the Federal Constitution, to the effect that citizens of each state shall be entitled all the privileges and immunities of citizens of the several states.

[fol. 152] (Discussion off the record.)

The Court: You might put in the record that I have asked Mr. Greis to state each reason separately and upon the statement of the reason argument will be immediately had and disposed of as we proceed. Then, of course, you will have a right to go back over your ground.

Mr. Greis: In the three reasons that I have already stated.

The Court: Not only these three reasons, but any number of reasons that you have assigned.

Mr. Greis: In that case, if your Honor please, I will argue the second reason that I assigned. I won't argue the first because the Court, as a matter of fact, has ruled upon each of these several reasons in the motion to quash before the plea, and overruled them.

On the second reason assigned, that is, that the indictment fails to charge a crime, I would like also to add that I question and suggest to the Court that it has no jurisdiction, and in my argument I will show your Honor what that is based on.

This indictment charges, after naming the parties, at the Borough of Wildwood Crest, on the 12th, 16th, 19th and 24th days of July, 1936, and within the jurisdiction of the court, they and each of them not being engaged in any lawful [fol. 153] occupation, they and all of them known to be members of a gang consisting of two or more persons, they and each of them having been convicted of a crime in the State of Pennsylvania, are hereby declared to be gangsters.

Arguing together the question of the indictment itself as charging a crime and the question of the Court's jurisdiction, it is an absolute proposition of law and of statutory construction that a statute must charge acts that are committed within the jurisdiction of the Court. In other words, we know the well-settled rule that a crime committed in some other county aside from the County of Cape May, or in some other state, is cognizable under the government in that jurisdiction. For instance, if it were committed in Gloucester County, it would be charged and it would be tried there, and the Court in this county would have no jurisdiction. Likewise, if the matter were something arising in the State of Pennsylvania, that is a sovereign state, with jurisdiction and courts of its own, and with laws of its own, and we have no jurisdiction over matters not committed or charged within our own county.

The indictment, as a matter of fact, does charge that on these dates these set of circumstances or status of the de-

fendants existed. But it charges no overt act of any kind or description having been committed within the jurisdiction of the court. In other words, a crime, as to all law up to the passage of this statute has always construed it, is the [fol. 154] doing or not doing of some particular act. In other words, it is an act of omission or commission. But here is an attempt made by statute under the fourth section of his so-called gangster act of 1934, Chapter 155, to make a person in a given status a criminal, chargeable under this act, indictable and punishable by a fine of \$10,000 or twenty years in states prison, or both.

Now, if your Honor please, at a very early date our courts held, and held very decisively, in the case of State against Carter, 27 Law, 499, in an opinion by Justice Vredenburg, of the Supreme Court of this State, the salient part of which is on page 501:

"If the acts charged in this indictment be criminal in New Jersey, it must be either by force of some statute or upon general principles. There is no statute, unless it be the act to be found in Nixon's Digest 184, Section 3. But this evidently relates to murder only, and not to manslaughter.

"But I cannot make myself believe that the legislature, in that act, intended to embrace cases where the injury was inflicted within a foreign jurisdiction, without any act done by the defendant within our own. Such an enactment, upon general principles, would necessarily be void; it would give the courts of this state jurisdiction over all the subjects of all the governments of the earth, with power to try and punish them, if they could by force or fraud get possession of their persons in all cases where personal injuries are followed by death."

[fol. 155] And concluding the opinion, the Justice says:

"It is said that if we do not take jurisdiction, the defendant will go unpunished, inasmuch as the party injured not dying in New York, he could not be guilty of murder there. But New York may provide by law for such cases, and if she does not, it is their fault, and not ours. The act done is against their sovereignty, and if she does not choose to avenge it, it is not for us to step in and do it for them.

"I think that the Oyer and Terminer should be advised that no crime against this state is charged in the indictment."

Now, I base the motion for direction on that ground, on the jurisdictional ground, upon the fact that each of the state's witnesses upon cross-examination have admitted that they know nothing of the defendants, of their personal knowledge, and, in fact, have not seen them for anywhere from nine months, eighteen months, two years, up to ten or twelve years, in each case, against each of the defendants, in the evidence of each of the Prosecutor's witnesses produced against these defendants. That is prior to the date of the arrest, and the date of the arrest, of course, the 24th of July, is one of the dates charged in the indictment, and the other dates being the 12th, 16th and 19th of the same month. In other words, there is before this court at the present time no evidence of any witness on the part of the State charging these defendants with even the matters contained in the statute, which I say is not a crime and does not constitute a crime, but even the proof is lacking that any of this condition existed closer than nine months. The one witness that came closest to these dates was the witness Captain Ryan, whose testimony was nine months, and his time was the shortest. Every other witness gives a longer and further date in front of or before the dates charged in the indictment.

Under those circumstances, it seems to me that the Court not only should direct this verdict upon the ground that the State has failed to prove its case in that particular, but upon the additional ground that no charge as made in the indictment and during the periods covered in the indictment has been proven before the Court by any witness for the State.

Mr. Loveland: If the Court please, the State asks that the motion be dismissed. The overt act set forth in the statute is membership in the gang. The State has proven the existence of the gang as stated by the defense in the City of Philadelphia, and the State has proved the existence of the gang at the present time. There is testimony to the effect that they were present, and the testimony is all the items in the indictment have been proved, that they were within the jurisdiction of this court. It has been so testi-

fied by several different witnesses. Ruggerio and Kelly and Ryan and Hamilton, all of them testified of the presence of these persons, and the entire line of State's witnesses [fol. 157] have said that the defendants are members of the gang and continue so to be.

The Court: Without any further comment on my part, I will deny your motion, Mr. Greis, on that reason.

Mr. Greis: Your Honor will allow me the customary exception?

The Court: It will be granted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

Palmer M. Way, P. J. (Seal.)

Mr. Greis: I would like to add the further comment upon that same subject, that we suggest that the existence of a gang, what was meant by a gang, what constitutes a gang, was not proven by the State, what kind of gang or what—just what they meant. They merely made the blanket statement that they were members of a gang, which I think is not sufficient proof of its existence.

The Court: Now, I assume that you make that statement in order that your record concerning your thoughts might be complete on this point.

Mr. Greis: Yes.

The Court: And that you probably desire a re-statement [fol. 158] of my ruling in order to have your exception cover that.

Mr. Greis: That is correct.

The Court: Very well, you will be permitted an exception, as my ruling will be the same, and is the same.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

Palmer M. Way, P. J. (Seal.)

Mr. Greis: I have already stated under the third reason, the constitutional ground, which I again reiterate to the Court. That is, that it violates the provision that citizens of each state shall be entitled to the privileges and immunities of the citizens of the several states. That point was

argued to your Honor in the motion to quash, and I here repeat it, with the same line of reasoning.

The Court: Do you desire a ruling on that point at this time?

Mr. Greis: Yes.

The Court: Well, I will deny your motion.

(To which ruling the defendants, by their counsel pray [fol. 159] a bill of exceptions, which is hereby allowed and sealed accordingly.

Palmer M. Way, P. J. (Seal.)

Mr. Greis: I further move, your Honor for a direction of a verdict upon each of the several constitutional grounds that were named and argued in the motion to quash, namely, that the state violates—the statute and the indictment under it violate the Thirteenth Amendment of the United States Constitution providing against servitude; and the Fourteenth Amendment to the Federal Constitution which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States or of any state, deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

And also under Article I, Section 1 of the New Jersey Constitution, which provides natural and unalienable rights of enjoying and defending life and liberty, acquiring, possession and protecting property, and pursuing and obtaining safety and happiness.

And also that it is a violation of the New Jersey Constitution, Article I, Section 18, providing that people have the right freely to assemble together, to consult for the common good.

And also that it violates Article IV, Section 7, paragraph 3, of the State Constitution in New Jersey, which provides [fols. 160-227] that the Legislature shall not pass any bill of attainder or ex post facto law.

And also that it violates Article IV, Section 7, paragraph 4, of the New Jersey State Constitution, that every law shall embrace but one object and that shall be expressed in the title, et cetera.

I think that is all, if your Honor please.

The Court: I will deny your motion on those grounds, Mr. Greis, and your exception will be noted, of course.

Mr. Greis: Yes.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

Palmer M. Way, P. J. (Seal.)

[fol. 228]

COURT'S CHARGE TO THE JURY

WAY, J.:

Ladies and gentlemen of the jury: The State of New Jersey has by action of the Grand Jury of this County charged these three defendants, namely, Frank Pius, alias Frank Lanzetta, alias Ignatius Lanzetta, alias Ignatius Lanzetto, alias Ignatius A. Lanzetti, and Michael Falcone, alias Mickey Britt, and Louis Del Rossi, alias Fattie Louie, with crime—charged them with crime, which crime was alleged to have been committed on the 12th, 16th, 19th and 24th days of July of this year, 1936, in the Borough of Wildwood Crest of this County, and generally within the jurisdiction of this Court.

Now this accusation so made by the Grand Jury does not in itself mean that the defendants or either of them are guilty of the crime so charged. Each of the defendants have plead not guilty. They have plead separately to the charges that have been allotted against them and by so doing have created an issue in each instance, which issues are now being tried in this court together, in order to determine the truth or the falsity of the charges which have been made against them. And from the testimony that has been adduced by the State and by the defense you are to decide whether the defendants or either of them are guilty or not guilty.

[fol. 229] Thus, ladies and gentlemen, your part in this trial is of the utmost importance. Under the law, you and you alone are the sole judges of the facts and all questions of fact that come up in this trial. You are to decide and to settle who is telling the truth upon the witness stand, and you are to give the weight to the testimony or parts of the testimony as you in your sound judgment think

should be given to it or any part of it. You have had the opportunity to note the demeanor of the witnesses as they have been presented to you for testimony and as they have testified.

Now my part in this trial has been to see to it that only proper and legal evidence or testimony should be given to you for consideration—for consideration after you retire. This, of course, I have tried to do, and I shall now not comment on the testimony or upon the evidence that has come from the witnesses' lips, as your memory concerning it is perhaps as good or maybe better than mine, and anything that I might say concerning it would probably tend to confuse you because, after all, as I have said and as has been indicated in the argument, you are the sole judge of the facts.

Now, it has been stated, too, in the argument, and I think perhaps it is well worth going over from the standpoint of the Court, that our State by an act of its Legislature did supplement our Crimes Act in 1934, and it was supplemented under Chapter Laws, 1934, Chapter 155, at page 394. It has been read to you, I believe, by counsel either [fol. 230] in their arguments or their openings, but now that I am giving you the instructions—about to give you the instructions, I think perhaps that I should go over it again and restate to you the part of that chapter that we are working under—that these defendants have been charged under.

Section 1 has a bearing upon this charge, and it reads:

“A gangster is hereby declared to be an enemy of the State.”

Section 2 and Section 3 we are not concerned in, because the charge has not been brought under those sections.

But the charge has been brought under Section 4 of the Act, and that reads:

“Any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in this or in any other State, is declared to be a gangster, providing, however, that nothing in this Section shall in any wise be construed to include any participant or sympathizer in any labor dispute.”

Of course, that is a proviso that does not in any way concern us.

[fol. 231] Section 5 provides in general that any person convicted of being a gangster under the provisions of this Act shall be guilty of a high misdemeanor.

Now as to the punishment under this Act, if there is no guilt, if you so find it, obviously there would be no punishment. If there is, on the other hand, guilt, then the subject of punishment rests entirely with the Court.

As I have stated, the defendants have each been accused of the crime so described, and now that they have been so accused there is a presumption of innocence in favor of these defendants throughout the trial, and the defendants are presumed to be innocent until the State has established their guilt beyond a reasonable doubt. And a reasonable doubt has been defined to be not a mere possible doubt, but it is that state of the case which, after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. That is a definition that is given to us in law. So, ladies and gentlemen, the State must prove to your satisfaction beyond a reasonable doubt that the defendants at bar, Frank Pius, alias as I have indicated, the Lanzetti defendant, and Michael Falcone, alias as I have indicated him, and Louis Del Rossie, as I have indicated him—I repeat that the proofs must be to the extent as I have indicated.

They must also prove under the elements which are set [fol. 232] up under the Act, first, that these defendants, each of them, had no lawful occupation and, second, that they were known to be members of a gang consisting of two or more persons; third, that they were convicted at least three times of being a disorderly person or that they were convicted of crime in this or in any other state. You have heard this testimony. As I have said before, I am leaving the inferences to you.

Now if the State has established these charges or these elements as I have indicated, and by evidence beyond a reasonable doubt, then it becomes your duty to convict such person or persons as is here accused or charged. If, on the other hand, you are not satisfied to the extent that I have indicated it is then in the course of your duty to acquit

such person or persons as accused or charged. This case now rests with you to determine the guilt or the innocence of each of these defendants, and that you will indicate upon your return of your verdict. That is to say, you will find the guilt or innocence in connection with each of the defendants separately when your verdict is returned.

I have been requested on the part of the defense to charge you somewhat at length, and I shall charge you in accordance with the requests that have been made, with such modifications as I shall indicate.

First. If the State has not proven to you beyond a reasonable doubt that Ignatius Lanzetti was not engaged in [fol. 233] a lawful occupation on July 12, 16, 19 and 24 of this year, 1936, the dates laid down in the indictment, then you must return a verdict of not guilty as to Ignatius Lanzetti.

I charge you the same as to Michael Falcone, and the same as to Louis Del Rossi.

The next one: If the State has not proven to you beyond a reasonable doubt that a gang generally and commonly known as the Lanzetti gang was in existence on the dates laid in the indictment—that is, July 12th, 16th, 19th and 24th of this year, then you must return a verdict of not guilty as to all defendants.

If the State has not proven to you beyond a reasonable doubt that any of these defendants were members of a gang generally and commonly known as the Lanzetti gang, then you must acquit those against whom the State has not satisfied you beyond a reasonable doubt.

I have been asked to define reasonable doubt, which I have already done. As a matter of fact, my general charge covered many of these things that will appear in these special requests.

This is another charge: As to Louis Del Rossi, the testimony is that he was walking with his wife. I charge you that standing alone, without any other circumstances involved, that is a lawful act.

[fol. 234] As to Michael Falcone, the testimony is that he was entering a car occupied by a young lady. I charge you that standing alone, without any other circumstances involved, that is a lawful act.

As to Ignatius Lanzetti: Being at home on July 24, 1936, with his family is in itself a lawful occupation, and I charge you that it is in itself a lawful act.

Next charge: There is no evidence before you that any of the defendants were in this state on July 16th, 1936, one of the dates laid in the indictment, and you can disregard that date entirely.

Next charge: The laws of the State of New Jersey do not require anyone to pursue an occupation on the Sabbath and it is common knowledge and the Court takes notice that July 12th and 19th were Sundays and the defendants were not obliged to pursue an occupation on those dates.

I refuse to charge the rest as written, as the statement is too broad.

Next charge: The defendants are charged with a criminal offense. Fundamentally a crime is an act of commission or omission, but the offense charged must be specific and certain and established by the State by clear, convincing testimony beyond a reasonable doubt.

Next charge: If the State has failed to establish by competent evidence that defendants committed an act of omission or commission prohibited by law against the State, you must return a verdict of not guilty.

Next charge: The State is relying wholly on circumstantial evidence to establish that defendants were known to be members of a gang on the dates charged in the indictment. Circumstantial evidence relied upon must be such as to exclude the hypothesis of innocence. The inferences to be found from such facts must be consistent with guilt and with guilt alone.

Next charge: Although the indictment is joint and includes all three defendants, you may acquit one, two or all of the defendants if the State has not proven all the elements laid down in the indictment to your satisfaction beyond a reasonable doubt.

Next charge: The burden of proof is upon the State, and the burden is never upon the defendant. If the State fails to carry the burden of proof, you must return a verdict of not guilty.

The State has requested me one charge to make:

Where the defendants make no effort to take the stand to testify each for himself on his own behalf, I want to say to you that if facts are testified to which concern the acts of the defendant, which could be by his oath denied, his failure to

[fol. 236-240] testify in his own behalf raises a strong presumption that he cannot truthfully deny them.

I so charge.

Now you may take the jury and retire. Everybody remain seated while the jury leaves.

Mr. Greis: I take a general exception to the charge.

The Court: Exception will be noted.

(To which ruling the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

Palmer M. Way, P. J. (Seal.)

[fol. 241] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

THE STATE, Defendant-in-Error,

v.

FRANK PIUS, Alias, etc., et als., Plaintiffs-in-Error

On Error to the New Jersey Supreme Court

ASSIGNMENTS OF ERROR

And now, on this — day of October, 1937, comes the defendants, by James Mercer Davis, Esq., their Attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the judgment thereon, as aforesaid, there is manifest error in this, to wit:

1. Because the Court below adjudged that Chapter 155 of P. L. 1934 of New Jersey, does not violate the provisions of the Constitution of the United States guaranteeing due process of law as set forth in the fifth and fourteenth amendments of the Federal Constitution.

2. Because the learned Court below adjudged that the defendants had not been subjected to double jeopardy.

[fol. 242] 3. Because the learned Court below adjudged that Chapter 155 of P. L. 1934, was not an ex post facto law.

4. Because the learned Court below affirmed the judgment of conviction of the Cape May Quarter Sessions Court.

James Mercer Davis, Of Counsel with the Plaintiffs-in-Error.

IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

WRIT OF ERROR

THE STATE OF NEW JERSEY, ss:

(L. S.)

The State of New Jersey to the Chief Justice and other Justices of the Supreme Court of Judicature of the State of New Jersey, Greeting:

Because in the indictment, record and proceedings, and also in giving judgment upon certain indictments against Frank Pious, alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, upon charges of being enemies of the State and gangsters, and with violations of the provisions of the Statute which is Chapter 155, Laws of 1934, of the State of New Jersey, in the Borough of Wildwood, County of Cape May and State of New Jersey, which was in our Supreme Court of Judicature, before you, between the State of New Jersey and the said defendants, manifest error hath inter-[fols. 243-244] vened to the great damage of the said Frank Pious, alias Ignatius Lanzetta, Michael Falcone and Louis Del Rossi, defendants in said indictment, as by their complaint we are informed; we being willing that the error, if any there be, should in due manner, be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your hand and seal, the indictment, record and proceedings with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the eighteenth day of October next, together with this writ, that the indictment, record and proceedings, etc., being inspected we may cause to be done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton the 28th day of September, 1937.

Thomas A. Mathis, Clerk.

James Mercer Davis, Attorney.

[fol. 245] IN SUPREME COURT OF NEW JERSEY, No. 5, MAY TERM, 1937

THE STATE, Defendant-in-Error,

v.

FRANK PIUS, Alias, etc., et als., Plaintiffs-in-Error

Argued May 5, 1937. Decided — —, 1937

1. Alleged errors of law at a criminal trial, not brought up by suitable assignments of error, will not be considered in review.

2. An assignment of error that the verdict below was contrary to the charge of the Court, points out no judicial action for review.

3. Supplement to the Crimes Act, Chapter 155 of P. L. 1934, held not unconstitutional on any ground argued in this case.

Error to Cape May Quarter Sessions.

[fol. 246] Before Brogan, Chief Justice, and Justices Trenchard and Parker

For the plaintiffs-in-error: George R. Greis and Andrew Cafiero.

For the State: French D. Loveland, Prosecutor of the Pleas, and Herbert F. Campbell, assistant prosecutor.

OPINION—Filed May 18, 1937

The opinion of the Court was delivered by

PARKER, J.:

The three defendants were convicted as "gangsters" under an indictment based on Section 4 of Chapter 155 of the Laws of 1934 (P. L., page 394). The section provides that "any person, not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who was been convicted of any crime, in this or in any other State, is declared to be a gangster;" with a proviso not here applicable. Section 5 provides as to the penalty: "Any person convicted of being a gangster

under the provisions of this act shall be guilty of a high misdemeanor, and shall be punished by a fine not exceeding \$10,000, or imprisonment not exceeding twenty years, or both."

The case is before us on strict writ of error only and is of course considered in that aspect. The first principal ground [fol. 247] for reversal now urged is based on the fourth assignment of error, that the Court refused to direct an acquittal when so moved. This motion was made when the State rested, and again at the conclusion of all the evidence. In the first case the granting or denial of the motion was discretionary, and not reviewable on strict writ of error. *Burnett v. State*, 62 N. J. Law, 510; *State v. Jaggars*, 71 Id. 281, 283; *State v. Metzger*, 82 Id. 749. But the same reasons were invoked at the conclusion of the evidence. Those now argued are: 1. Failure to prove the existence of a "gang" at the time laid in the indictment. There was evidence for the jury on that point. With its weight we are not now concerned. 2. Failure to prove that defendants were known to be members of such alleged "gang." There was similar proof on that point also; as also: 3. That they were not engaged in any lawful occupation at the times laid in the indictment. The argument here is that the point is covered only by oral statements of the defendants at or shortly after the time of arrest, which were objected to and admitted over exception. But these rulings are not assigned as error, and therefore require no consideration at this time. 4. That four dates were charged in the indictment, and three were excluded from the consideration of the jury: hence, a general verdict of guilty was contrary to the charge of the Court. But if the conditions of the statute were met on one date, the crime was complete. Moreover, the assignment of error covering this point, that "the verdict was contrary to the Court's charge and contrary to the evidence" fails to point out any ruling by the Court.

[fols. 248-249] The second main point is that Chapter 155 of P. L. 1934 is unconstitutional. For this four grounds are specified. Two are substantially the same, viz. due process of law, guaranteed by the fifth and fourteenth amendments of the Federal Constitution. As to these, we are content to rest on the very recent decision of this Court in *State v. Bell*, 15 Misc. 109, 188 Atl. 757. "Double jeopardy" is claimed; but no prior conviction or indictment was even suggested. It will be time enough to take up this point when

there is a second indictment for the same offense. Further it is specified in the brief that "the vagueness and indefiniteness of the act would create concurrent jurisdiction in every county in the State." No doubt such concurrent jurisdiction would exist in every county where the act is violated; as indeed it should exist. Finally, that the act is *ex post facto* in this case because the Pennsylvania convictions of crime that were proved as an element of the present statutory offence took place some years ago. But the statute is not aimed at punishing convicted criminals because they are convicted criminals, but because, being such, they become members of a gang organized to plot and commit further crimes, and neglect or refuse to engage in any lawful occupation. The act is therefore predicated on two present and voluntary acts of the party, both of which must concur: voluntary membership in a gang; and voluntary abstention from work. We see no *ex post facto* legislation here.

Finding no legal error properly laid before us under this writ, the judgment of conviction is affirmed.

[fol. 250] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

THE STATE OF NEW JERSEY, Defendant-in-Error,

VS.

FRANK PIUS, Alias IGNATIUS LANZETTA, MICHAEL FALCONE,
and LOUIE DEL ROSSI, Plaintiffs-in-Error

On Writ of Error

ORDER OF AFFIRMANCE

This cause having been duly submitted at the January Term, 1938, of this court, upon the briefs of James Mercer Davis, Esq., of counsel with plaintiffs-in-error, and French B. Loveland, Esq., Prosecutor of the Pleas, of counsel with defendant-in-error, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court.

It is, Thereupon, on this 29th day of April, in the year of our Lord, one thousand, nine hundred and thirty-eight, Ordered and Adjudged that the judgment of the Supreme Court in this cause be affirmed.

On motion of: Herbert F. Campbell, Assistant Prosecutor, of counsel with defendant-in-error.

[fol. 251] Filed Aug. 25, 1938. Thomas A. Mathis, Clerk.

[fols. 252-256] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY, No. 15, FEBRUARY TERM, 1938

STATE OF NEW JERSEY, Defendant-in-Error,

v.

FRANK PIUS, Alias IGNATIUS LANZETTA, MICHAEL FALCONE
and LOUIE DEL ROSSI, Plaintiffs-in-Error

Submitted — — —. Decided April 29, 1938

On error to the Supreme Court, whose opinion is reported in 118 N. J. L. 212, 192 Atl. 89.

For plaintiffs-in-error; James Mercer Davis, Samuel Kagle and Carl Kisselman.

For defendant-in-error; French B. Loveland, prosecutor of the pleas, Herbert F. Campbell, assistant prosecutor of the pleas.

OPINION—Filed April 29, 1938

Per CURIAM:

We are in full accord with the reasoning and result reached by the Supreme Court. We desire merely to mark the fact that the case of *State v. Bell*, 15 N. J. Mis. R. 109, 188 Atl. 737, relied upon by the court below as dispositive of the contentions that our Gangster act (1 Rev. Stat. (1937) 2:136-4 (Ch. 155, P. L. 1934, p. 794) trenches upon both federal and state constitutional inhibitions, has recently been affirmed by this court sub nomine *State v. Gaynor*, 119 N. J. L. 582, 197 Atl. 360.

Accordingly, the judgment under review is affirmed with costs.

[File endorsement omitted.]

[fol. 257] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 20, 1938

The appellants in the above entitled suit, and each of them, having prayed for the allowance of an Appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Errors and Appeals of the State of New Jersey on the 29th day of April, 1938 and from each and every part thereof, and having presented and filed their Petition for Appeal, Assignments of Error and Prayer for Reversal, pursuant to the Statute and Rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an Appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the judgment of the New Jersey Court of Errors and Appeals in this cause as provided by law;

[fol. 258] And it is further ordered that the Clerk of the Court appealed from shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days of this date.

And it is further ordered that security for costs on Appeal be fixed in the sum of \$100.

Dated at Philadelphia, Pennsylvania, this 15th day of July, 1938.

Owen J. Roberts, Associate Justice of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 259] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL—Filed
July 15, 1938

Comes now the appellants, Ignatius Lanzetta, Michael Falcone and Louie Del Rossi, and in connection with their petition for an appeal, say that there are errors in the record and proceedings in the above entitled case and for the

purpose of having the same reviewed in the Supreme Court of the United States from the final judgment of the New Jersey Court of Errors and Appeals entered on April 29, 1938.

First. Said New Jersey Court of Errors and Appeals erred in giving final judgment affirming the judgment of the Supreme Court of New Jersey holding that Chapter 155 P. L. 1934 is a Constitutional act.

[fol. 260] Second. Said New Jersey Court of Errors and Appeals erred in failing to acquit and discharge the defendants-appellants of the charges set out in the indictment, to wit, being gangsters in violation of Section 4 of Chapter 155 of the Laws of 1934 (P. L. page 394).

Third. Said New Jersey Court of Errors and Appeals erred in failing to hold that Section 4 of Chapter 155 P. L. 1934 violates the Fourteenth Amendment of the Federal Constitution in that it denies due process of law.

Fourth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Section 4 of Chapter 155 of the Laws of 1934 is in violation of defendant-appellants privileges and immunities as citizens of the United States, which privileges and immunities are guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fifth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Section 4 of Chapter 155 of Laws of 1934 violated the 10th Section of Article 1 of the Constitution of the United States.

Sixth. Said New Jersey Court of Errors and Appeals erred in entering the following Final order and judgment, "Accordingly the judgment under review is affirmed with costs."

Prayer for Reversal

Wherefore, the defendants-appellants pray that said final judgment of the New Jersey Court of Errors and Appeals dated April 29, 1938, affirming the conviction of the defendants-appellants having violated the Gangster Act of 1934 be reversed; that the New Jersey Court of Errors and Appeals be directed to vacate said judgment; that said New Jersey Court of Errors and Appeals be directed to acquit [fols. 261-267] defendants-appellants of the charge set out

in the indictment and to order that they be discharged and released forthwith; and that all the proper relief be granted to defendants-appellants.

Dated at Philadelphia, Pennsylvania, this 15th day of July, 1938.

The Defendants-Appellants, Ignatius Lanzetta, Michael Falcone and Louie Del Rossi by Harry A. Mackey, George C. Klauder and Samuel Kagle, their attorneys.

Samuel Kagle. George C. Klauder. Harry A. Mackey.

Endorsed: "Filed Jul. 20, 1938. Thomas A. Mathis, Clerk."

[fol. 268] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed August 31, 1938

Points to be Relied Upon

The points on which appellant intends to rely are as follows:

1. That the "Gangster Law of New Jersey", Chapter 155 of P. L. 1934, Page 794, is repugnant to the Constitution of the United States in that (1) It violates Section 10 of Article 1 which prohibits the States from passing ex post facto laws; (2) It violates the Fourteenth Amendment to the Federal Constitution in that it denies due process of law; and (3) It violates the privileges and immunities as citizens of the United States, which privileges and immunities are guaranteed by Section 1 of the Fourteenth Amendment to the Constitution.

[fol. 269] Parts of the Record Necessary for Consideration of the Points Relied Upon

Appellants believe the following portions of the record (State of Case) are necessary to be printed for the consideration of said points:

Assignments of Error in the New Jersey Supreme Court (State of Case, pp. 1 to 3).

Writ of Error (State of Case, pp. 4, 5).

Judgment Record (State of Case, pp. 6 to 15 inc.).

Motion to Quash Indictment (State of Case, pp. 16 to 25 inc.).

Testimony of Sargeant William P. Kelly (State of Case, pp. 52 to 67 inc.).

Testimony of Detective Frank Ruggerio (State of Case, pp. 67 to 70 inc.).

Testimony of Corporal A. J. Waldringer (State of Case, pp. 70, 71).

Testimony of Captain James P. Ryan (State of Case, pp. 72 to 93 inc.).

Testimony of John J. Creedon (State of Case, pp. 93 to 100 inc.).

Testimony of Francis J. Dunn (State of Case, pp. 106 to 115 inc.).

Testimony of Charles Steinberg (State of Case, pp. 118 to 124 inc.).

Testimony of George Muhs (State of Case, pp. 132 to 138 inc.).

Defendant's Motion for Dismissal (State of Case, pp. 151 to 160 inc.).

Court's Charge to Jury (State of Case, pp. 228 to 236 inc.).

Assignments of Error and Writ of Error—Court of Errors and Appeals (State of Case, pp. 241 to 243 inc.).

Opinion of the New Jersey Supreme Court (State of Case, pp. 245 to 248 inc.).


Opinion of Court of New Jersey Errors and Appeals appended to the State of Case.

Respectfully submitted, Harry A. Mackey, Samuel Kagle, George C. Klauder, Attorneys for Appellants.

[fol. 270] [File endorsement omitted.]

Endorsed on cover: File No. 42,793. New Jersey Court of Errors and Appeals. Term No. 308. Ignatius Lanzetta, Michael Falcione and Louie Del Rossi, appellants, vs. The State of New Jersey. Filed August 30, 1938. Term. No. 308, O. T., 1938.

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